2-1674

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-1674

I. P. COX, SAMMIE H. COX, IRMA J. CREEL, F. WHEELER SMITH, M. M. BRAY, and CLEMON ODOM, Suing on Behalf of Themselves and All Other Owners of Rural Real and Personal Property in Macon County, Georgia, Subject to 1972 Ad Valorem Tax Assessment Increases for State, County, and School Taxes,
Petitioners,

vs.

JOHN A. BLACKMON, State Revenue Commissioner; ERNEST B. DAVIS, State Auditor; MRS. E. D. HAMMOCK, Tax Receiver of Macon County; J. H. PATTERSON, Tax Collector of Macon County; ROY S. WINDHAM, Sheriff of Macon County; HUGH D. CROOK, Chairman, HERBERT COOGLE, J. M. SLATON, RANDALL JINKS and DOYLE H. JOHNSON, as Members of the Board of Commissioners (of Roads and Revenues) of Macon County; the Board of Commissioners (of Roads and Revenues) of Macon County; W. H. GUERRY, Clerk of the Board of Commissioners (of Roads and Revenues) of Macon County; WALTER FORSLING, Chairman, FRED F. VIRDEN, R. A. PHILLIPS, JAMES E. HEATH, and G. L. WILLIAMS, as Members of the Board of Tax Assessors of Macon County; the Board of Tax Assessors of Macon County; and BRUCE P. HILL, Clerk of the Board of Tax Assessors of Macon County,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Georgia

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PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Georgia

1

FORMAT

Petitioners pray that a writ of certiorari issue to review the opinion of the Supreme Court of Georgia in this case, and they hereinafter follow the format required by Rule 23 of this court.

2

OFFICIAL REPORT OF OPINION BELOW [Rule 23, 1.(a)]

The opinion of the Supreme Court of Georgia, in the case at bar is already reported in the advance sheets of **Georgia Reports**, the official reports of that court, as "27682. Cox et al. v. Blackmon, State Revenue Commissioner, et al." The citation of the opinion in the bound volume will be "230 Ga. 275." A copy of the opinion is included herewith as Appendix A.

3

GROUNDS OF JURISDICTION [Rule 23, 1.(b)]

Dates of Judgment and Entry of Judgment Sought to Be Reviewed (i)

a. The date of the judgment, which judgment is set out in said opinion, which opinion constitutes Appendix A, and which judgment is sought to be reviewed, is February 22, 1973, and the time of its entry of record is also February 22, 1973. However, an order of the Supreme Court of Georgia, dated March 19, 1973, which order stays the remittitur for ninety days, erroneously refers to the date of the judgment, of which review is being sought, as March 15, 1973, which is the date of the denial of a motion for rehearing of said final judgment of February 22, 1973.

b. A copy of said order of March 15, 1973, is included herewith as Appendix B, and a copy of said order of March 19, 1973, constitutes Appendix C.

Date of Order Respecting Rehearing and Date and Terms of Order Granting Extension of Time (ii)

c. The date of the order denying the motion for rehearing by petitioners is March 15, 1973, as aforesaid in (i), and

there has been no petition for, nor order of, an extension of time within which to petition for certiorari.

d. Supersedeas was denied petitioners by the trial court on October 6, 1972, and their application for stay was denied petitioners by the Supreme Court of Georgia on October 12, 1972. Therefore, there has been no further application for stay, by petitioners, to the Supreme Court of Georgia, of the collection of the allegedly illegal ad valorem taxes, inasmuch as such an application appears to be entirely futile. Consequently, such "taxes" are still being collected from your petitioners.

e. An application for stay, addressed to Justice Lewis F. Powell, Jr., was submitted to this court on April 2, 1973, and was denied, however without prejudice, on April 5, 1973.

Statutory Provisions Believed to Confer Jurisdiction to Review Judgment by Writ of Certiorari (iii)

f. Petitioners seek a review of said final judgment of the Supreme Court of Georgia, under 28 U.S.C.A., Sec. 1257 (3), (June 25, 1948, c. 646, 62 Stat. 929) and under 28 U.S. C.A., Sec. 2101 (c), (June 25, 1948, c. 646, 62 Stat. 961; May 24, 1949, c. 139, Sec. 106, 63 Stat. 104.), which two statutory provisions may be found in Appendix D.

4

THE QUESTIONS PRESENTED FOR REVIEW

[Rule 23, 1. (c)]

There are many questions presented for review, some of the less important of which are not set out below individually but are comprised within the several broad questions below:

a. Whether the Supreme Court of Georgia erred in holding, in division 1 of its opinion, that its decision in **Griggs v. Greene**, 230 Ga. 257, reviewed all of the questions of federal unconstitutionality raised in the case at bar, its opinion in **Griggs v. Greene** being included herewith as Appendix E.

b. Whether the Supreme Court of Georgia erred in holding, specifically in divisions 1 and 3 of its opinion, and generally in its opinion, in the case at bar, i.e., **Cox v. Blackmon**, 230 Ga. 275, in reference to said **Griggs v. Greene**, that it violates the due process and equal protection of the laws clauses of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States of America for the Revenue Commissioner of the State of Georgia to order explicitly in writing a county board of ad valorem tax assessors to increase the assessment values of all properties to be found in any particular column of a county tax digest by a particular percentage, arbitrarily and discriminatorily, and without the individual taxpayer being given an opportunity to contest the assessment increase, whereas said federal constitutional guarantees are not violated when the Revenue Commissioner effects the same results, as happened in Macon County, Georgia, in 1972, without an explicit written order to the county tax assessors but by "advice" and threats that, otherwise, he will not approve the county tax digest for the year and county government and public schools will cease to function.

c. Whether the Supreme Court of Georgia erred in holding, in division 2 of its opinion, that, "The issue as to taxpayers other than the plaintiffs for the year 1972 is moot . . .," when the Supreme Court of Georgia either well knew, or could have determined, that in late February, 1973, almost $70,000.00 in property taxes for 1972 had not yet been paid and that **Cox v. Blackmon** had been docketed in the Supreme Court of Georgia on November 27, 1972, and argued on January 9, 1973, on the same day that said **Griggs v. Greene** was argued.

d. Whether the Supreme Court of Georgia erred in holding, in division 3 of its opinion, that the evidence did not demand "a finding that assessments were raised arbitrarily under the direction of the State Revenue Commissioner in varying percentages upon the same class of property."

e. Whether the Supreme Court of Georgia erred in affirming the trial court, when the Supreme Court of Georgia held implicitly, in division 2 of its opinion, either that the case is a class action or that the six named plaintiffs had had standing in the trial court to demand that respondents not violate the law, including the constitutional precepts of due process of law and equal protection of the laws, during the ad valorem taxing process, whereas the trial court held otherwise.

f. Whether the Supreme Court of Georgia erred in holding, in division 3 of its opinion, that the arbitration permitted the six named plaintiffs afforded those six petitioners complete relief for 1972, and by suggesting, in division 2 of its opinion, that all others of your petitioners were personally responsible for not seeking arbitration, when, in fact, the evidence is not only overwhelming that all notices of assessment increases on real property of petitioners were illegal and that no notices whatever were issued to petitioners as to increased assessments on their personal property, but such evidence is not even in dispute.

g. Whether the Supreme Court of Georgia erred in holding that arbitration afforded "complete relief" to anyone under the circumstances of the case, when controlling case law of Georgia on the point is that arbitration under such circumstances does not even provide an adequate remedy at law and petitioners have never prayed for or demanded arbitration in the pleadings of this case.

h. Whether the Supreme Court of Georgia erred in holding, in division 4 of its opinion, that a reversal of the trial court on all other enumerations of error not reviewed by the Supreme Court of Georgia, including the dismissal of petitioners' complaint as to the State Revenue Commissioner and the State Auditor, would not aid petitioners.

i. Whether the Supreme Court of Georgia erred in not deciding ". . . all questions presented in the record of" this case "carried up to it for review . . .," when, in fact, petitioners enumerated thirty-nine errors of the trial court in their appeal to the Supreme Court of Georgia, which thirty-nine enumerations of error formed and presented for review at least twenty-four questions of law and equity, as well as seven questions of fact and eight combined questions of fact, law, and equity, whereas the Supreme Court of Georgia in its opinion virtually ignored all but three of such questions.

j. Whether the Supreme Court of Georgia erred in not fairly stating the case in its opinion, by indicating, for instance, in its official report of the case that the case was "Submitted January 9, 1973," with no other indication in the report that the case was docketed on November 27, 1972, in the Supreme Court of Georgia, and the original complaint filed in the trial court on August 12, 1972, so that no one merely reading the official report of the case and having no other knowledge of the case can understand very well what the Supreme Court of Georgia supposedly decided in **Cox v. Blackmon**, but will be erroneously lead to

believe that petitioners did not seek relief in a timely manner and that the case and the opinion are of little importance, which coverup by the Supreme Court of Georgia as to the significance of **Cox v. Blackmon** in relation to said **Griggs v. Green** violates due process of law and equal protection of the laws as guaranteed petitioners by the Fifth Amendment and the Fourteenth Amendments of the Constitution of the United States of America.

k. Whether the Supreme Court of Georgia erred in holding that **Georgia Laws**, Acts 1966, page 45, as amended by Acts 1970, page 91, and Acts 1970, page 642, and Acts 1972, page 174 (Georgia Code Annotated, Section 92-7001 and Section 92-7002), are not unconstitutional as to petitioners for want of due process of law and equal protection of the laws under the Fifth Amendment and the Fourteenth Amendment of the Constitution of the United States of America, insofar as said Acts authorize the Revenue Commissioner of the State of Georgia to effect the increase of the valuation of the tangible property of an individual taxpayer, for ad valorem tax purposes, which taxpayer has timely filed a property tax return to the Tax Receiver, or Tax Commissioner, as the case may be, of the county where the property of the taxpayer is located, which increase in tax assessment valuation is not based on "the best obtainable information" as to the individual property of the individual taxpayer, but which increase is primarily based on an average value of a sample of other tangible properties that happen to be listed for clerical purposes by the taxing officials in the same county ad valorem tax digest column, which average value has been determined by a "ratio study" made by the Auditor of the State of Georgia, whether or not the Revenue Commissioner effects such an increase by direct, explicit written order to the county board of tax assessors, and whether or not the Revenue Commissioner effects such an increase by any method, or methods, less than a direct, explicit written

order to the county tax assessors to increase the tax assessments of all properties listed in a particular county tax digest column by a certain percentage, such as (but not limited to) an explicit written order to increase the total valuation of the current property tax digest of the county by a certain percentage, with the implicit message to the county assessors that the Revenue Commissioners expects, advises, and suggests that the increase in the total county digest be achieved by increasing all properties listed in the several digest columns by a certain, but different, percentage in each column, without the assessors' first having "the best obtainable information" as to the value of each individual property, which "best obtainable information" should at least include an appraisal, made within the past twelve months, on the site, or location, of the individual property by a person recognized by state law to be a professionally competent property appraiser, said Georgia statutes here under attack being set out verbatim in Appendix F.

l. Whether the Supreme Court of Georgia erred in holding that **Georgia Laws**, Acts 1970, pages 542 and 543, and Acts 1972, pages 829 and 833 (Georgia Code Annotated, Section 92-7008), are not unconstitutional as to petitioners, and those similarly situated, for want of due process of law and equal protection of the laws under the Fifth Amendment and the Fourteenth Amendment of the Constitution of the United States of America, insofar as said Acts authorize and direct the Auditor of the State of Georgia to conduct "ratio studies" of the fair market values and the taxed values of various classifications of real property throughout the state, county by county, said classifications being those universally used in the county tax digest form, which digest form lumps rural homes, consisting often of one acre or less, together with large farms and ranches, and which digest form also lumps urban homes together with large industrial properties, and which digest

form also lumps together various other disparate rural real properties, such as forest land with rurally located manufacturing plants, and also lumps together other disparate urban real properties, such as undeveloped swamp land with commercial buildings, by which "ratio studies" the State Auditor then concludes that all rural real properties in a particular county are delinquent by a certain percentage as to whether or not they are being returned for ad valorem taxes by their owners at 100% of their fair market values and therefore are being assessed for property taxes at the rate of 40% of their said fair market values, and by which "ratio studies" the State Auditor also concludes that all tangible personal properties, with certain exceptions, located in rural areas of a county are being delinquently returned for taxes at precisely the same percentage as are all of the rural real properties in the same county, which "ratio studies" and said conclusions of the State Auditor are then used by the Revenue Commissioner of the State of Georgia, as his basic tool, in the "equalization program," there being, however, no "ratio studies" of tangible personal property required under said Georgia statutes here under attack, nor any such "ratio studies" of personal property required under any other state law and no comparable "ratio studies" of personal property being done in fact by taxing officials of the State of Georgia, said "ratio studies" therefore being, not only incapable of helping to achieve ad valorem taxation equalization throughout the state, but designed to further the unequal ad valorem taxation in Georgia as between real property and personal property, and are said statutes unconstitutional insofar as they prohibit the use of, as a sales sample in said "ratio studies," any one parcel of real property which exceeds 10% of the total of all sales prices in one of the "ratio studies," said Georgia statutes here under attack being set out verbatim in Appendix G.

m. Whether the Supreme Court of Georgia erred in holding, in division 1(a) of its opinion, in effect, that **Georgia**

Laws, Acts 1937-38, Extra. Sess., pages 156, 159 (Georgia Code Annotated, Section 92-116) are not unconstitutional, when the provision therein is that the ad valorem tax on money in Georgia is only 10¢ per $1,000.00, when $1,000.00 of rural land in Macon County, Georgia, in 1971, was taxed $11.26, because such a vast disparity in the taxation of property violates due process of law and equal protection of the laws under the Fifth Amendment and the Fourteenth Amendment of the Constitution of the United States of America, said Georgia statutes here under attack being set out verbatim in Appendix H.

n. Whether the Supreme Court of Georgia erred in holding, in effect, by ignoring the question, that ad valorem taxation generally is in compliance with the federal constitution, when, in fact, ad valorem taxation as presently enacted and administered in Georgia violates the due process of law and equal protection of the law's clauses of the Fifth Amendment and the Fourteenth Amendment of the Constitution of the United States of America, and when, in fact, it appears virtually impossible to administer ad valorem tax laws in a constitutional manner anywhere.

o. Whether the Supreme Court of Georgia erred in holding, in effect, that the methods, acts, procedures, forms, and notices of respondents in 1972 in increasing the ad valorem tax assessments on the tangible rural properties, both real and personal, of petitioners, which properties were located in Macon County, Georgia, on January 1, 1972, and then in levying, collecting, and attempting to collect ad valorem taxes for state, county, and school purposes, from petitioners, based on a county tax digest for 1972 compiled from such increased assessments, did not violate, and still do not violate, the rights of petitioners under the due process clause and the equal protection of the laws clause of the Constitution of the United States, specifically Article XIV of the Amendments, Section 1 thereof, and the Fifth Amendment thereof.

p. Whether the Supreme Court of Georgia erred in affirming the trial court, because, then, the Georgia courts' methods, acts, procedures, findings of fact and law, judgments, orders, and decrees, and the lack of some of same, such as would have constituted or resulted in appropriate injunctive relief for petitioners, and failure to rule on issues presented to them by petitioners, violated, and still violate, said federal constitutional rights of your petitioners to due process of law and equal protection of the laws.

q. Whether the Supreme Court of Georgia erred in affirming the trial court, because, more specifically, but not hereby limiting the scope of the last question, the trial court denied petitioners due process of law and equal protection of laws under the federal constitution when it refused to consider this a class action, under the state statute providing for same.

r. Whether the Supreme Court of Georgia erred in affirming the trial court, because respondents, in fact, arbitrarily increased the ad valorem tax assessments in 1972 on the properties of petitioners without appraisals of the individual parcels of said properties, to determine their fair market values, and otherwise without the best obtainable information as to said fair market values, in contravention of state statutory and case law, and therefore in violation of said federal constitutional guarantees of due process of law and equal protection of the laws.

s. Whether the Supreme Court of Georgia erred in affirming the trial court, because respondents, in fact, discriminatorily increased the 1972 real property ad valorem tax assessments of petitioners by 54%, while only increasing the assessments on urban real property in Macon County, Georgia, by 8%, in violation of said federal constitutional guarantees of due process of law and equal protection of the laws.

t. Whether the Supreme Court of Georgia erred in affirming the trial court, because respondents, in fact, discriminatorily increased the 1972 personal property assessments of petitioners by as much as 500%, while hardly making any tax assessment increases on the personal property of urban taxpayers of said county in violation of said federal constitutional guarantees of due process of law and equal protection of the laws.

u. Whether the Supreme Court of Georgia erred in affirming the trial court, because respondents, in fact, as a matter of policy, arbitrarily failed and refused universally to give petitioners any meaningful notice of said ad valorem tax assessment increases and any opportunity to protest said increases at a meaningful time and place, in contravention of state statutory and case law, and therefore in violation of said federal constitutional guarantees of due process of law and equal protection of the laws; and

v. Whether the Supreme Court of Georgia erred, because, regardless of whether or not any Georgia statute under attack by petitioners as being in violation of the federal constitution is in fact unconstitutional, or is held to be unconstitutional by this court, the State of Georgia, by and through the acts of its agents, officials, and courts, has deprived your petitioners of their property without due process of law and denied them equal protection of the laws, and the State of Georgia continues to so deprive and deny your petitioners, in violation of their constitutional rights as citizens of the United States of America.

5

THE FEDERAL AND STATE CONSTITUTIONAL PROVISIONS AND STATE STATUTES INVOLVED [RULE 23, 1.(d)]

a. The federal constitutional provisions involved are the Fifth Amendment and the Fourteenth Amendment, Section 1, of THE CONSTITUTION OF THE UNITED STATES OF AMERICA, as follows:

> "Article V. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

> "Article XIV. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

b. The several state statutes (four in number, as codified) under most direct attack by petitioners as being in violation of said federal constitutional provisions for due

process of law and equal protection of the laws are to be found verbatim in Appendix F, Appendix G, and Appendix H. However, their citations are as follows:

I. **Georgia Laws**, Acts 1966, p. 45, as amended by Acts 1970, p. 91, and Acts 1970, p. 642, and Acts 1972, p. 174 (Ga. Code Ann., Sec. 92-7001, and Sec. 92-7002).

II. **Georgia Laws**, Acts 1970, pp. 542, 543, and Acts 1972, pp. 829, 833 (Ga. Code Ann., Sec. 92-7008).

III. **Georgia Laws**, Acts 1937-38, Extra. Sess., pp. 156-159 (Ga. Code Ann., Sec. 92-116).

c. The Supreme Court of Georgia, in reaching its decision in the case at bar, not only disregarded said federal constitutional provisions and erroneously held said several statutes listed above as being constitutional, but disregarded the following provisions of the Georgia Constitution of 1945 (which provisions are set out verbatim in Appendix I):

Paragraph III, Section I, Article I, providing for due process of law.

Paragraph II, Section I, Article I, providing for equal protection of the laws.

Paragraph III, Section I, Article VII, requiring uniformity of taxation.

d. The state statutes cited in the following list are necessary to an understanding of the questions presented to this court, and are to be found verbatim in Appendix J:

I. Ga. Code Ann., Section 81A-123 (a)(1) (Acts 1966, pp. 609, 632.), a statutory law providing for class actions under conditions which prevailed when this action was initiated and which conditions still prevail.

II. Ga. Code Ann., Section 92-5702 (Acts 1909, p. 75; 1968, p. 358.), a statutory law defining "fair market value" for ad valorem tax purposes.

III. Ga. Code Ann., Section 92-5703 (Acts 1851-2, p. 291; 1909, p. 37; 1968, pp. 358, 359.), a statutory law providing that all tangible property shall be assessed for ad valorem tax purposes at "40 per cent of said fair market value."

IV. Ga. Code Ann., Section 92-6201 (Acts 1913, p. 123; 1945, pp. 424, 425; 1953, Nov. Sess., pp. 270, 271.), a statutory law requiring tax receivers to receive ad valorem tax returns from January 1 to April 1 of each year.

V. Ga. Code Ann., Section 92-6902 (Acts 1913, p. 123; 1945, p. 423.), a statutory law requiring tax receivers to present the tax returns of the counties to the county boards of tax assessors within ten days after April 1.

VI. Ga. Code Ann., Section 92-6911 (Acts 1937, pp. 517, 519; 1970, pp. 580, 581; 1971, p. 33.), a statutory law providing for some of the duties of the board of county tax assessors in each county, including their duty to examine tax returns, and the manner in which such a board shall change the assessment on any property and the manner in which notice of such change shall be given the taxpayers.

VII. Ga. Code Ann., Section 92-6912 (Acts 1913, pp. 123, 127; 1918, pp. 230, 231; 1913, pp. 7, 35; 1958, p. 387; 1969, p. 942.), a statutory law providing for arbitration of disputed new tax assessments, when demanded under certain conditions.

VIII. Ga. Code Ann., Section 92-6917 (Acts 1913, pp. 123, 129; 1931, pp. 7, 35; 1945, p. 251.), a statutory law requiring the county boards of tax assessors to complete their revisions and assessments of the returns by June 1 of each year, and then further requiring the tax receivers of each county to forward immediately thereafter the completed digests to the State Revenue Commissioner for examination and approval.

IX. Ga. Code Ann., Section 92-8406 (Acts 1937-38, Extra. Sess., pp. 77, 81; 1967, pp. 764, 765; 1970, pp. 298, 299.), a statutory law requiring the Revenue Commissioner of the State of Georgia to administer all of the revenue laws of the state.

X. Ga. Code Ann., Section 92-8427 (Acts 1937-8, Extra. Sess., pp. 77, 91.), another statutory law requiring the Revenue Commissioner to administer all of the revenue laws of the state.

XI. Ga. Code Ann., Section 92-4611(8) (Acts 1804, Cobb, 1045. Act 1807, Cobb, 1054. Act 1812, Cobb, 1057. Act 1813, Cobb, 1059. Acts 1851-52, p. 290; 1962, p. 533; 1970, p. 641.), a statutory law requiring a tax receiver, "To conform to such rules as he may be furnished with, and to obey such orders as may be given by the State Revenue Commissioner."

XII. Ga. Code Ann., Section 92-4901(8) (Acts 1878-79, p. 78.), a statutory law requiring a tax collector to, "Conform to such rules as may be furnished, and to obey such orders as may be given by the Commissioner."

XIII. Ga. Code Ann., Section 92-8407.1 (Acts 1971, pp. 301, 302; 1972, pp. 824, 825.), a statutory law prohibiting the State Revenue Commissioner from approving any county tax digest from a county in which "the assessed value fixed by the Board of Tax Assessors for any property, or properties, on appeal or in arbitration exceeds 3% of the total assessed value of the total digest of such county for the same year," etc., as amended in 1972, to 5%.

XIV. Ga. Code Ann., Section 92-7011 (Acts 1970, pp. 542, 546; 1972, pp. 829, 832.), a statutory law providing, among other things, that the State Auditor present his yearly ratio study of real property to county officials by

November 15 prior to each tax year in which it is to be used as a guide.

XV. Ga. Code Ann., Section 92-7012 (Acts 1970, pp. 542, 546; 1972, pp. 829, 832.), a statutory law providing an arbitration procedure by which county officials may challenge the findings of any particular ratio study, but which procedure may take as much as 135 days.

XVI. Ga. Code Ann., Section 81A-165(b) (Acts 1966, pp. 609, 665; 1967, pp. 226, 240; 1972, pp. 689, 698.), a statutory law requiring a trial court to give a case such as the one at bar ". . . precedence over all matters except older matters of the same character . . ."

XVII. Ga. Code Ann., Section 6-701(b) (Acts 1965, p. 18; 1968, pp. 1072, 1073), a statutory law which required the Supreme Court of Georgia to review and determine the legality of the dismissal of respondents Blackmon and Davis as defendants by the trial court by its order dated September 27, 1972, and which also required the Supreme Court of Georgia to ". . . review all judgments, rulings or orders raised on appeal which may effect the proceedings below . . ."

XVIII. Ga. Code Ann., Section 6-1601 (Acts 1845, Cobb, 448. Acts 1872, p. 54.), a statutory law which provides for the Supreme Court of Georgia, among other things, ". . . The court shall decide all questions presented in the record of each case carried up to it for review . . ."

6

CONCISE STATEMENT OF THE CASE [Rule 23, 1.(e)]

54% Increase on Rural Land, 8% on Urban Land

a. On June 8, 1972, the Board of Tax Assessors of Macon County, Georgia, increased the ad valorem tax assessment

on each and every parcel of rural real property in Macon County by 54% above the 1971 tax assessment on the same property, while at the same time increasing the assessment on each and every parcel of urban real property in the county by only 8% above its 1971 assessment, none of which increases in assessments was based on a new appraisal of the individual parcel of property involved, nor based on any other information that even approximated "the best information obtainable," which is the basis required by state law, but were supposedly based approximately on averages of samples of values of real property in the county made by the State Auditor's staff, which samples had been incorporated into a report called the "Macon Tax Ratio Study 1971."

As Much as 50% Increase on Farm Inventories, None on Urban Inventories

b. On July 5, 1972, said county board of Tax Assessors also increased the ad valorem tax assessments on the tangible personal properties of petitioners, above their 1971 assessments, as follows:

500% on all hogs,

200% on all cows, and

100% on all tractors and other farm machinery,

while at the same time increasing the assessments on all other machinery and equipment located in the four municipalities of the county by only 50% above their 1971 assessments and making no increase whatsoever on inventories in stores, warehouses, and manufacturing plants located in said four municipalities, said increases having been made without benefit of any new or recent appraisals of any such personal properties, and said lack of any increase on urban inventories having also been without benefit of any appraisal, new or old, but which increases, and lack of

increases, having supposedly been based on the same, supposed total tax assessment percentage deficiency that the State Auditor claimed to have found in his study in 1971 of real property values in Macon County, Georgia.

Illegal Notices of Tax Assessment Increases on Real Property But No Notices Whatever on Increases on Personal Property

c. After July 5, 1972, over a period of several days in July, 1972, said county board of tax assessors mailed notices of said increases in assessments on real property to the individual taxpayers but never notified the taxpayers as to said increases in assessments on personal property, although the notice form used as to real property assessment increases had spaces for notice of said personal property assessment increases, which spaces were left blank, and which notice form was the only form used and **which notice form was held to be illegal by the trial court.**

State Statute, Requiring That Notice of Increased Assessment Inform Taxpayer of Right to Arbitrate, Violated

d. Said notices as to the real property assessment increases did not comply with the state statute requiring notice of an ad valorem tax assessment increase, which statute requires the same notice as to an increase of the assessment on personal property. The statute requires, among other things, that the notice inform the taxpayer of his right to demand arbitration, which was the taxpayer's only initial form of appeal in 1972 (however, a 1972 statute having abolished arbitration after January 1, 1973, in favor of a new county Board of Equalization), but said notices received by petitioners, not only did not inform them of the right to arbitrate, but informed them deceptively that they could appeal to the same Board of Tax Assessors which had just made the tax assessment increases.

Public Protest of Increased Assessments

e. Many ad valorem taxpayers, most of whom are your petitioners, tried to "appeal" to said county board of tax assessors, but there were so many trying to "appeal" their increased assessments on the few nights set aside for such "appeals" at the county courthouse, that some of your petitioners were not even able to see and talk with said assessors, much less get any relief from them. 137 taxpayers, most, if not all of them, your petitioners, returned their illegal notices to the assessors, marked variously "Refused" or "Rejected," but did not demand arbitration, because of their ignorance of arbitration as even an apparent possibility for relief.

Relief Granted Only to Favored Few

f. Only about 60 of the total 5300 parcels of land had their assessment increases lowered as a result of said "appeals," i.e., only slightly over 1%, and these exceptions themselves were granted to a favored few in an attempt to diminish the public outcry, rather than in an attempt to establish the "fair market value" of each of these 60 parcels and the consequent assessment value of each (the assessment value being 40% of fair market value, according to state statute).

Apparent Legal Remedy of Arbitration Denied Petitioners by County Tax Assessors as Conscious Policy

g. When the first named petitioner, i.e., I. P. Cox, finally learned of the possibility of arbitration, whether an adequate remedy or not, he demanded it on July 31, 1972, and the county assessors agreed on July 31, 1972, to arbitrate but they refused to arbitrate, by letter dated August 2, 1972, informing Mr. Cox that his demand had been made too late. The Board of Tax Assessors of Macon County, in

short, consciously avoided informing the aggrieved ad valorem taxpayers of any possibility of arbitration (although, in their defensive pleadings later, respondents claimed arbitration to have been an adequate remedy at law available to your petitioners) and thereby succeeded in depriving said taxpayers of their only apparent legal remedy, i.e., arbitration, because no one, in fact, arbitrated until after the trial court ordered that the six named petitioners be given the opportunity to arbitrate.

Class Action With Over Three Hundred Ad Valorem Taxpayers Participating in Writing

h. The original complaint of petitioners was presented to the trial court judge on August 11, 1972, and filed on August 12, 1972. Over three hundred of your petitioners (many of whom had been among the 137 who had "Refused" and "Rejected" their assessment increase notices earlier) thereafter signed a petition, with the abbreviated name and style of the complaint and a 100-words statement at the top of the pages of the petition, indicating that they wished to be considered among the plaintiffs in this class action and that they were indeed members of the class. Your petitioners, then, relying on the case at bar as a class action in their behalf filed no other complaint in equity and pursued no other legal remedy, there, in truth, having been no adequate remedy at law for any of them to have pursued at anytime anyhow, arbitration having been entirely inadequate as a legal remedy under the circumstances, as is held by controlling Georgia case law.

Three-Days Hearing and Long Transcript

i. There was an interlocutory hearing on September 11, 12, and 15, 1972, which resulted in a transcript over 430 pages in length (the exact number not indicated because of insertions by the court reporter of extra pages not

consecutively numbered), over 200 pages of which is of testimony, the balance being of documentary evidence and colloquy.

Evidence Adduced by Petitioners Overwhelming That Tax Assessment Increases Were Made Arbitrarily and Discriminatorily

j. There were sixteen witnesses, all called to the stand by petitioners, and 49 exhibits, most of them multi-page documentary exhibits, all submitted by petitioners. Respondents adduced no evidence of their own, and the evidence of petitioners not only sufficiently, but exhaustively, proves that the ad valorem tax assessment increases made by the Board of Tax Assessors of Macon County in 1972 were made arbitrarily and discriminatorily at the **direction** of the State Revenue Commissioner, and under **pressure** from him that otherwise the Macon County Tax Digest of 1972 would not be approved by him, which approval is necessary under Georgia statutory law before ad valorem taxes may be collected, which taxes are necessary to operate the county government and provide county services and to operate the county schools and retire county school bonds, only one-quarter of one mill in taxes going to the state government. However, the State Revenue Commissioner apparently **never explicitly ordered** said unconstitutional increases in writing as a direct result of rejecting a Macon County digest submitted to him by the Tax Receiver of Macon County.

Two Other Similar Ad Valorem Tax Cases Decided by the Supreme Court of Georgia on Same Date on Which This Case Decided

k. There were two other ad valorem tax cases decided by the Supreme Court of Georgia on the same date that this case was decided, i.e., February 22, 1973. They arose

in Fayette County and Brooks County, Georgia, and the 1972 tax digest of each of these two counties had been rejected by the State Revenue Commissioner after having been submitted by the Tax Receiver, or county Tax Commissioner, as the case may be (some counties in Georgia having a Tax Receiver and a Tax Collector, whereas other counties have a Tax Commissioner who performs both the duties of Tax Receiver and Tax Collector), after the county tax assessors had refused to make the arbitrary and discriminatory assessment increases that the State Revenue Commissioner had **advised** them to make, but had **not explicitly** ordered them to make, because under state statute, he could only explicitly order them to make such unconstitutional increases after submission to him of a proposed current tax digest. By submitting their 1972 tax digests to him without having first complied with the State Revenue Commissioner's "advice," the officials of Fayette County and Brooks County forced him to order such unconstitutional increases explicitly in writing.

Supreme Court of Georgia Has Ruled Arbitrary and Discriminatory Tax Assessment Increases Unconstitutional if Explicitly Ordered But Constitutional if Implicitly Ordered

1. The main factual difference between this case and said other two cases is that the Macon County tax assessors complied with said "advice" of the State Revenue Commissioner before their county digest was submitted to him, and yet the Supreme Court of Georgia ruled, in the one opinion written to cover both said other cases, that it was, and is, unconstitutional for the State Revenue Commissioner **to order** such arbitrary and discriminatory tax assessment increases **explicitly in writing**, whereas its opinion in the case *sub judice* explicitly tolerates such unconstitutional behavior if it occurs without the explicit written order of the State Revenue Commissioner and

only under the pressure of the knowledge of his certain rejection of the county tax digest if and when it is submitted to him for approval without the increased assessments that he wants.

Ad Valorem Tax Chaos in Georgia in 1972

m. These three cases are the only ones, known to your petitioners, that have reached the Supreme Court of Georgia as a result of the ad valorem tax chaos in the state in 1972, although there were apparently at least seventeen counties in which such cases were pending in January, 1973, in which the State Revenue Commissioner was a defendant. It is common knowledge in the state that there has been, and still is, widespread unrest because of the unconstitutional ad valorem tax assessment increases made in 1972 in all 159 counties, either by explicit or implicit orders of the State Revenue Commissioner. The term "tax revolt" is not unheard, and newly-formed ad valorem taxpayers' associations are not uncommon.

Increases Not for Additional Revenue But Under Guise of Property Tax Equalization Program

n. Said tax assessment increases for petitioners were not made ostensibly to raise additional revenue but under the guise of an equalization program now being conducted throughout the State of Georgia, the basic purpose of which may be legal but the methods of which are monstrously unconstitutional.

Summary of Equalization Program and Reactions Thereto in Various Counties

o. Ga. Code Ann., Sec. 92-7008 (Acts 1970, pp. 542, 543; Acts 1972, pp. 829, 833), originally in 1970 estsablished a four-years program of equalization, requiring "ratio studies" of each county in 1971, 1972, and 1973, which

"ratio studies" were to be averaged in 1974 and used to implement "equalization" in 1974, in those counties which were still delinquent.

p. However, the legislature of Georgia amended the law in 1972, which amendment eliminated the three-years averaging of the "ratio studies" and required implementation of equalization in 1972, based on only the 1971 ratio study.

q. Notice was given the county boards of tax assessors, throughout the state, of their respective, alleged delinquencies, on or about May 15, 1972, which notices, in effect (if tax assessment increases had been made legally, although the notices did not require, or even suggest, new appraisals), required each of the 159 counties of the state to appraise, or to reappraise, as the case might be, each and every parcel of real property located in the county and also to appraise, or reappraise, all or almost all personal property therein, by June 1, 1972, the deadline date for county assessors to alter the ad valorem tax returns of their citizens, immediately after which date the Tax Receiver is required to submit the county tax digest to the State Revenue Commissioner, which, of course, was an impossible requirement.

r. Said speed-up of the equalization program was also impossible to administer even in accordance with other statutes, one of which requires the "ratio study" to be presented by the State Auditor to the county taxing officials no later than November 15 of the year prior to the tax year, so that the county officials may contest the findings of the "ratio study," which challenge might take as long as 135 days, i.e., almost until April.

s. Consequently, the several counties of the state thrashed about in different ways, under the impossible requirements of said statute, related statutes, and the executive branch of state government; and, by October 2, 1972, apparently only 34 of the 159 counties had had their ad valorem tax

digests approved by the State Revenue Commissioner, when most of them are usually approved some time during the summer.

t. However, there were two basic responses by the county taxing officials to said unconstitutional and otherwise illegal and administratively impossible requirements.

u. About 110 counties refused the "advice," "suggestion," "urging," and "direction" of the State Revenue Commissioner simply to increase the assessments of all parcels of property listed in each column of the county digest form by certain fixed percentages, without statutorily required notices to the individual taxpayers and without an opportunity to contest the assessment increases by the individual taxpayer.

v. This refusal and the submission of their digests to the State Revenue Commissioner without his required increases forced him to **order** the county officials to make said increases, under a statute apparently allowing such digest column "factoring" to be ordered by the State Revenue Commissioner, without any notice thereafter to the individual taxpayer nor any opportunity to be heard by the taxpayer, i.e., Ga. Code Ann., Sec. 92-7001(c). (See Appendix F.)

w. This was the course of events in said Fayette County and Brooks County.

x. The other basic response, which apparently occurred in the other 49 counties, was to comply with the "advice" of the State Revenue Commissioner and "factor" the various columns of their digests, without new appraisals, without legally sufficient notices of the increases, and without an opportunity to be heard by the individual taxpayer.

y. This is what happened in Macon County and to your petitioners.

Present Status of Other Cases

z. Your petitioners do not know the present status of any of the other fourteen cases (of the seventeen cases indicated above in paragraph m of this item 6), nor what may now be happening in any of said 110 counties as direct results of the decision of the Georgia Supreme Court in said Fayette County and Brooks County cases, nor in any of said other 48 counties as direct results of the decision rendered by the Georgia Supreme Court in this Macon County case.

Impact of Fate of This Case in U. S. Supreme Court

aa. Petitioners do not claim to constitute all of said aggrieved ad valorem taxpayers of Georgia. However, your petitioners do verily believe that whatever action is taken by the Supreme Court of the United States in regard to the case at bar, be it even a simple refusal to grant the petition for writ of certiorari, will have immediate consequences throughout the State of Georgia, not only as to 1972 ad valorem taxes but as to 1973 ad valorem taxes and in future years.

Explanation of "Digest Column Factoring"

bb. The Supreme Court of Georgia has held in the Fayette County and Brooks County cases that the State Revenue Commissioner may not order county tax assessors to increase the assessments on all parcels of property listed in the various columns of the county tax digest (which is uniform throughout the state) by different percentages according to the column, just because each parcel happens to be listed in that particular column.

cc. However, the Supreme Court of Georgia in said Fayette-Brooks opinion has held that the State Revenue Commissioner may order a county digest to be increased as to

the total of its assessments by a certain percentage, and the decision of the Supreme Court of Georgia in **Cox v. Blackmon**, the case at bar, explicitly tolerates the "digest column factoring" by the county tax assessors under **pressure** from, but not explicit **order** of, the State Revenue Commissioner.

The Supreme Court of Georgia Consciously Minimized the Significance of Cox v. Blackmon

dd. The Supreme Court of Georgia devoted over eighteen pages to its opinion in the said cases of **Griggs v. Greene** (the case from Fayette County) and **Blackmon v. Brasington** (the case from Brooks County) (Appendix E), but only devoted two pages to **Cox v. Blackmon.**

ee. Further, petitioners respectfully observe that all three cases were argued on January 9, 1973, but the report of the Fayette-Brooks cases indicates that they were argued on January 12, 1973, and says nothing about when they were "submitted."

ff. Still further, the Fayette-Brooks report indicates that the Attorney General of Georgia, the Honorable Arthur K. Bolton, his Executive Assistant Attorney General, the Honorable Harold N. Hill, Jr., and Assistant Attorney General Richard L. Chambers, as well as Mr. H. Perry Michael and Mr. Gary B. Andrews, also assistant attorney generals, represented the appellant in the Brooks County case, whereas the report of **Cox v. Blackmon** indicates that only the said Mr. Michael and Mr. Andrews represented the state respondents Blackmon and Davis, Mr. W. T. Roberts having been counsel for the Macon County respondents.

gg. The truth is that the same five gentlemen, from Mr. Bolton through Mr. Andrews, signed the pleadings in both the Brooks County and the Macon County cases, and only Mr. Michael argued in the Supreme Court of Georgia in both cases.

hh. Consequently, petitioners think it incumbent upon them to point out to the Supreme Court of the United States that it appears to them to be obvious that the Supreme Court has made a conscious effort to minimize the significance of **Cox v. Blackmon**, knowing full well that petitioners were deprived of their federal constitutional rights in 1972 even when the State Revenue Commissioner did not exceed the guidelines laid out for him in the Fayette-Brooks opinion, which is printed immediately before **Cox v. Blackmon** in the advance sheets.

Same Unconstitutional Tax Assessment Increases in 1973 Feared

ii. Consequently, your petitioners fear that if the Supreme Court of the United States does not give your petitioners immediate relief as to 1972 taxes, they will be subjected to the same unconstitutional methods and deprivation of their property by illegal 1973 ad valorem taxes, as will most other taxpayers throughout Georgia.

jj. The basic unconstitutional procedures that are under attack here are the arbitrary and discriminatory percentage increases made in the tax assessments on both personal and real property of petitioners and failure to give legally required and meaningful notices of increases to petitioners and opportunities to be heard at meaningful times and places to contest such increases.

Irreparable Harm Being Inflicted Upon Petitioners Now

kk. Meanwhile, unless an injunction is granted immediately, petitioners will suffer irreparable harm, in that they will be required by respondents to pay immediately the balance of a total of approximately $100,000.00 more in state, county, and school ad valorem "taxes," for 1972, than they were required to pay in 1971, i.e., a total of ap-

proximate $415,000.00 contrasted to a total of approximately $310,000.00, which increase has been made in violation of rights of petitioners to due process of law and equal protection of the laws guaranteed to them by the federal constitution, and petitioners have no adequate remedy at law to prevent this unconstitutional levy or to recover said levy once it is exacted of petitioners.

II. Further, petitioners have exhausted all equitable remedies in the courts of the State of Georgia, the Supreme Court of Georgia, as aforesaid, having rendered its decision on February 22, 1973, affirming the trial court's interlocutory decree of October 6, 1972, which interlocutory decree denied petitioners, in the main, any substantive injunctive relief, and the Supreme Court of Georgia having denied on March 15, 1973, petitioners' motion for rehearing of said decision of February 22, 1973, which decision is final.

Four Divisions of Opinion of Supreme Court of Georgia in Case at Bar

mm. As best petitioners can interpret the two-pages opinion of the Georgia Supreme Court in the case at bar, rendered on February 22, 1973, Georgia's court of last resort has ruled, *inter alia*, that: first, petitioners' allegations of the unconstitutionality of various Georgia statutes were properly overruled by the trial court; second, the case is moot because "some taxpayers of Macon County" have already paid 1972 "taxes" and moot because petitioners other than the six named petitioners failed "to seek arbitration"; third, inasmuch as the trial court ordered the county board of tax assessors "to permit arbitration" for the six named petitioners, although for no other member of the class, all petitioners consequently had "complete relief for the year 1972," but "a reversal would be required," if assessments had been "raised arbitrarily under the direction of the State Revenue Commissioner"; and four, con-

sequently, all other "enumerations of error" . . . "relate to matters which would not, if error, aid the appellants if a reversal was obtained."

Acts of Respondents Unconstitutional Regardless of Constitutionality of Statutes

nn. Petitioners consider the Georgia Supreme Court to be in error as to the constitutionality of the various Georgia statutes involved but contend that they properly alleged and proved in the trial court that the county tax assessors, and other appellees, increased the ad valorem tax assessments on the properties of petitioners in an unconstitutional manner, in that said increases were made arbitrarily and discriminatorily, and were also made in contravention of state statutory and case law, as to procedure, regardless of whether or not any Georgia statute under attack is in fact unconstitutional.

Case Not Moot Then, Nor Now

oo. As to whether or not the case is moot, petitioners consider the Georgia Supreme Court to be in error, inasmuch as some petitioners, including both some of the six named petitioners and some of the balance of the class, still have steadfastly refused to pay any sum of money demanded of them by the Macon County Tax Collector as ad valorem taxes for 1972, and other petitioners, including some of the six named petitioners and some of the balance of the class, have paid the same sum that they paid in 1971 but have steadfastly refused to pay the entire amounts demanded of them for 1972.

pp. Further, in said two other, similar ad valorem tax cases, from Fayette County and Brooks County, the taxpayers were given relief by affirmation of their respective trial courts' interlocutory decrees (except the ruling of the trial court of Brooks County that various statutes of the

equalization program are unconstitutional), in which decrees those two other trial courts had specifically allowed such partial payments until such time as legal county tax digests could be compiled by their county assessors and county tax receivers, or county tax commissioners, as the case may be. The opinion in said other two cases is explicitly invoked by the Georgia Supreme Court in divisions 1 and 3 of its opinion in the case at bar.

qq. A copy of the interlocutory decree of the trial court of Brooks County is included herewith as Appendix K, said provision for partial, voluntary payments to be found on the last page thereof, paragraph V.

rr. A copy of the interlocutory decree of the trial court of Fayette County is also included as Appendix L. The amendment contains the provisions for voluntary payments.

ss. Still further, there is prior and controlling case law in Georgia that the case of aggrieved ad valorem taxpayers is not moot because they have already paid the illegal demands of the county tax collector, when the county tax digest has been illegally compiled.

tt. And petitioners further contend that, even if all illegal money demands of the Macon County Tax Collector had already been satisfied, their case is not moot, and should not be considered moot, if for no other reason, because they filed their complaint over nine months ago, i.e., on August 12, 1972, and have prosecuted their case with great diligence and persistence ever since and have only managed to exhaust all possible remedies in Georgia by March 15, 1973, through no fault whatever of their own.

uu. As of February 26, 1973, a balance of $69,263.75 apparently had not yet been paid of the total of $654,096.88 apparently expected to be collected in Macon County by respondents, and their successors in office, as ad valorem taxes for 1972.

vv. Of said $69,263.75 (which balance is probably much less by now, i.e., late May, 1973), apparently most of it was supposedly owed by various of your petitioners, petitioners having been advised by counsel as early as late October (1972) that the 1972 Macon County Tax Digest is illegal but that it might be wise for each petitioner to pay the same sum that he paid in 1971, if he wanted to pay some amount at the usual time, but not to pay the excess demand.

ww. Many of your petitioners followed said advice of counsel, but now, most of your petitioners have paid the entire illegal demands made upon them by the Tax Collector of Macon County; and unless the Supreme Court of the United States immediately grants a temporary injunction prohibiting respondents and their successors in office from collecting, and from implementing in any way, the collection of, any sum of money as ad valorem taxes based on the unconstitutional assessment increases made in Macon County, Georgia, in 1972, from petitioners, virtually all of said unconstitutional taxes will have soon been collected.

Substantial Federal Question Involved

xx. Consequently, there is a substantial federal question involved and irreparable harm in prospect for petitioners and hundreds of thousands, if not millions, of other Georgia citizens, and also out-of-state owners of Georgia property, lest this court immediately grant a temporary injunction, which shall specifically, temporarily enjoin respondents from doing anything further toward implementing the collection of any state, county, and school taxes in Macon County, Georgia, based on said illegal and unconstitutional assessment increases made in 1972, and prohibiting a repetition of their unconstitutional behavior in 1973.

7

CONTINUATION OF STATEMENT OF THE CASE [Rule 23, 1.(f)]

When and Where and in What Manner Federal Questions Raised in Trial Court

a. The federal questions presented for review (indicated in item 4 above) were first raised in the original complaint of petitioners filed on August 12, 1972, in the trial court when, after having described for three pages the universal, though arbitrary, increase of 30% in 1967, and then the arbitrary and discriminatory assessment increases of 54% on rural land but only 8% on urban land in 1972, without legal notice of same and without opportunity to be heard, petitioners alleged in paragraph 28, on page 8 (page 12 of the record from the trial court), as follows:

"28

"Now, however, the said 1972 increase of 54% in real property assessments outside the municipalities, as against only 8% inside said four municipalities, is not only illegal, unconstitutional, void, and nugatory, in contemplation of the law, but blantantly discriminatory and unjust in contemplation of principles of equity and justice, which plaintiffs and their class can no longer ignore, nor suffer."

b. Then the arbitrary and discriminatory nature of the tax assessment increases on personal property were described in paragraphs 29 through 32 of the complaint, immediately after which the "ratio study," as to real property was described as being "arbitrary" and "biased in favor of urban home owners," among other descriptive allegations, in paragraph 33, pages 9 and 10 (pages 13 and 14 of the record).

c. Next petitioners stated on pages 10, 11, and 12 (pages 14, 15, and 16 of the record), as follows:

"34.

"The statute under which said ratio study was made, i.e., Ga. Code Ann., Sec. 92-7008 (Acts 1970, pp. 542, 543) is unconstitutional in that it makes elaborate (although insufficient) provisions for the State Auditor to try to determine the real, present market value of real property and its relationship to its assessed value, which provisions are mandatory, and only, almost as an afterthought, says, 'and he **may** (emphasis added) develop separate ratios for personal property.'

"35.

"Defendant State Auditor Davis did not develop any such ratios for personal property in Macon County or elsewhere before defendant Blackmon ordered said arbitrary percentage increases on personal property ad valorem tax assessments in Macon County for the 1972 digest, nor did anyone else for said defendant Davis or defendant Blackmon.

"36.

"Contrary to law, the defendant Board of Tax Assessors did not employ an appraiser, nor use one in preparation of the 1972 digest.

"37

"Said ad valorem tax assessment increases on both real and personal, rural property in Macon County are unconstitutional in that even in 1971 assessments on said rural property was (sic) in excess of fair comparable assessments on the true, and fair, real, present market values on both real and personal properties of the public utilities located in Macon County, which public utilities are assessed at only about nine per centum (9%) of their true value in contrast to said 40% of true market value for other property owners.

"38

"Defendant Blackmon has not increased the assessments on said properties of the public utilities for the 1972 digest and does not intend to do so.

"39

"Said increased tax assessments in Macon County on rural property in 1972 is unconstitutional in that the defendant Board of Commissioners (of Roads and Revenues) will necessarily lower the millage rate in 1972, due to the increased total value of the prospective digest, which lowering of the millage rate will necessarily lower the absolute amount of 1972 ad valorem taxes the public utilities will pay on their properties in Macon County, resulting in rural property owners of Macon County paying this absolute loss of revenue from the public utilities at the rate of more than six to one, as compared to the owners of urban property in the county, who are not public utilities.

"40

"Said increased rural tax assessments are unconstitutional in that the ad valorem tax on money in Georgia is only 10¢ per $1,000.00, and other intangible, yet very real, personal property is also taxed at ridiculous and unconscienably low rates, whereas tangible real and personal property was taxed, for state, county, and school purposes in 1971 at the rate of $11.06 (as corrected in first set of amendments of petitioners) per $1,000.00 of supposedly true, fair, real, present market value, in Macon County.

"41

"Such vast differences in the ad valorem tax rates on different classes of property in Georgia are not the

results of error or mistake but have been consciously contrived by the General Assembly of Georgia and state officials to discriminate against the plaintiffs herein, and their class, and to deprive them of both due process of law and the equal protection of the laws guaranteed to plaintiffs and their class by both the state and federal constitutions, nor is there any valid social purpose or reason for such vast disparities in said ad valorem tax rates which even constitutes a mitigating circumstance; for instance, a man with $1,000,000.00 in cash in Macon County, Georgia, would have paid $1,000.00 (sic, actually $100.00) in ad valorem tax in 1971, but if he had purchased a farm in Macon County with his $1,000,000.00 before January 1, 1971, he would have paid $11,060.00 (as corrected in first set of amendments of petitioners) in ad valorem taxes."

d. Even though petitioners, as a class, are owners of both real and personal property subject to ad valorem tax, their total real property is by far more valuable than their total personal property, and therefore, they further attacked the federally unconstitutional failure of the State of Georgia to tax tangible personal property on an equal basis with real property, as follows:

"52

"(a) Defendants have not in 1972, nor have they in prior years, sought out, appraised, assessed, and taxed personal property located in Macon County, Georgia, which personal property is, and was, owned by persons who did not also own real property in said county, except motor vehicles, all of which they should have done under pertinent ad valorem tax laws, nor have they even attempted to assess and tax such personal property under said illegal procedures employed in 1972 and earlier.

"(b) Such total failure of defendants is conscious policy and purposeful discrimination against plaintiffs, and their class, and violates the state and federal constitutional rights of plaintiffs, and their class, to be protected by due process of law and to have equal protection of the law.

"(c) Defendant Blackmon and Davis, and other tax officials throughout the state of Georgia, have also so failed in their duties, in all the other counties in the state, and have also so discriminated against owners of real property in all the other counties in the state." (Pp. 14 and 15 of original complaint, pp. 18 and 19 of record.)

e. In their first set of amendments, filed on September 11, 1972, petitioners added new paragraph 35A. on pages F and G (pp. 54, 55, of the record), as follows:

"35A.

"(a) The statute under which said ratio study is now being used, i.e., Ga. Code Ann., Sec. 92-7008, as amended in 1972 (Acts 1970, pp. 542, 543; and Acts 1972, pp. 829-833) ('829-833' added in second set of amendments), is unconstitutional because it contains a mandatory requirement for the State Auditor to use the real property ratio as the ratio to help implement the increase in assessments on personal property, with certain exceptions, without any use of sales samples or appraisals of personal property whatsoever, which requirement of the statute has been obeyed by defendant Davis, resulting in increases in 1972 personal property assessments for plaintiffs and their class, which requirement of the statute is arbitrary and the resulting increases also discriminatory, in that an attempt is being made by various defendants to impose much greater increases on personal property located

outside cities in Macon County than inside cities, there being no necessary economic relationship between the increase of the true value of land in a given county and the increase of the true value of personal property in the same county, nor any necessary disparity between the increases of the true value of personal property outside cities and inside cities.

"(b) Ga. Code Ann., Sec. 92-7008 (f), before the 1972 amendment, was unconstitutional because of the prohibition against the use of the sales price of any one parcel which exceeded 5% 'of the total sales price of all parcels,' and after the 1972 amendment, because of the same prohibition, although raised to 10%, because there is a tendency for small tracts of rural land to sell for more money per acre than large tracts, all other factors being equal, and because in some counties, including Macon County, there are large parcels of industrial real property that are worth more than 10% of any sample of real property that might be taken, unless almost the entire real property digest were used in the ratio study, the owners of which large industrial parcels are frequently given favored treatment by local taxing officials, the exclusion of all of which large rural and large urban parcels of real property in the present, said, subject ratio study has deprived plaintiffs and their class of due process of law and the equal protection of the law, under both the state and federal constitutions."

f. In their second set of amendments, filed on September 15, 1972, petitioners added new paragraph 53D, on the second and third pages thereof (pp. 75, 76, of record), as follows:

"53D

"Under the guise of equalization the local taxing officials have implemented a plan which is not based

upon an appraisal of fair valuation, but which plan calls for discriminatory increases in real property assessments without any consideration for uniformity and without respect for the true value or to the equalization of values between landowners, all of which violates the equal protection clause and the due process clause of the 14th Amendment to the United States Constitution, and Article 7, section 1, paragraph 3, of the Constitution of the State of Georgia calling for uniformity of taxation."

g. In their third set of amendments, filed on September 25, 1972, petitioners added Count II of their complaint, on the first, second, and third pages thereof (pp. 78, 79, 80, of record), the following:

"COUNT II

"62

"For the sake of brevity Plaintiffs, by reference, incorporate herein paragraphs 1 through 21 of the original complaint; said complaint being hereinafter referred to as Count I.

"63

"Plaintiffs and other similarly situated are citizens, residents and taxpayers of Macon County, Georgia, and bring this action attacking the constitutionality of the method employed by local taxing officials while purportedly attempting to equalize taxes between the various taxpayers in said county, which method consisted of merely adding arbitrary and discriminatory percentage increases of either 54% or 8% on ad valorem tax assessments on all parcels of real property located in said county.

"64

"Under the guise of equalization the local taxing officials have implemented a plan which is not based

upon an appraisal or fair valuation, but which plan calls for discriminatory increases in real property assessments, of either 54% or 8% without any consideration for uniformity and without respect for the true value or to the equalization of values between landowners, all of which violates the equal protection clause and the due process clause of the 14th Amendment to the United States Constitution, and Article 7, section 1, paragraph 3, of the Constitution of the State of Georgia calling for uniformity of taxation.

"65

"Plaintiffs and others similarly situated show that this Court has jurisdiction of the parties herein and the subject matter relative hereto since the central question is one of public right and the object of this complaint being to procure the enforcement of a public duty as provided by law, i.e., that local taxing officials have a public duty to justly and fairly assess all property subject to taxation at its true market value so that forty (40%) per cent of said fair market value will be used for ad valorem tax purposes, and Plaintiffs and their class have a public right to see that said duty is not carried out in an unlawful manner.

"WHEREFORE, PLAINTIFFS, AND THEIR CLASS, PRAY AND DEMAND:

"(K) That the method of purported equalization employed by local taxing officials of Macon County, Georgia, be declared unconstitutional, which method consisted of merely adding arbitrary and discriminatory percentage increases of either 54% or 8% on ad valorem tax assessments on all parcels of real property located in said county;

"(L) That Defendant, Mrs. Hammock, the Tax Receiver of Macon County and Defendant, Board of Tax

Assessors be restrained and enjoined from submitting the 1972 Macon County ad valorem tax digest to Defendant Blackmon, the State Revenue Commissioner, which digest is reflective of said arbitrary and discriminatory percentage increases;

"(M) That Defendants and their successors in office be temporarily and permanently enjoined from in any manner, implementing the collection of taxes based on said 1972 ad valorem tax assessment increases for the year 1972 and all subsequent years;

"(N) That Plaintiffs and their class be granted such other relief as this court deems just and proper."

h. For this court to more readily understand whether or not, and if so, in what manner, petitioners raised the federal constitutional questions in the trial court, it seems important to get out here all of the other prayers and demands of petitioners in the trial court. Consequently, the prayers and demands of petitioners, as to Count I, in their original complaint, on unnumbered pages 18 and 19 hereof (pp. 22 and 23, of record), are as follows:

"WHEREFORE, PLAINTIFFS, AND THEIR CLASS PRAY AND DEMAND:

"(a) That process may issue requiring defendants to be and appear in this court as provided by law to answer this complaint;

"(b) That an ex parte restraining order be issued prohibiting defendants from altering, defacing, or destroying said 'refused' notices;

"(c) That an ex parte restraining order be issued prohibiting defendant Mrs. Hammock, the Tax Receiver of Macon County, from submitting the 1972 Macon County ad valorem tax digest to defendant Blackmon before a temporary hearing in this case;

"(d) That a temporary hearing be set, at which defendants shall be required to show cause, if any they can, why said two ex parte restraining orders should not be continued in force until a final determination of the case, or if the court has not granted said two ex parte orders, why they should not be granted after such hearing;

"(e) That, at the same temporary hearing, defendants be required to show cause, if any they can, why they should not be restrained, until a final determination of the case, from doing anything toward implementing the collection of taxes based on said 1972 ad valorem tax assessment increases on plaintiffs' rural, real and personal property in Macon County, Georgia, and specifically restraining defendant Mrs. Hammock from using such increased assessments in the 1972 digest, defendant Blackmon from approving a 1972 digest from Macon County with such increased assessments incorporated therein, and defendant Windham and Patterson, respectively the Sheriff and Tax Collector of Macon County, from collecting taxes based on such increased assessments;

"(f) That, at the same temporary hearing, defendant Blackmon be required to show cause, if any he can, why he should not be restrained, until a final determination in the case, from increasing any ad valorem tax millage rate for Macon County, Georgia;

"(g) That, should defendants fail to show sufficient cause, as required, at said temporary hearing, defendants indeed be restrained as indicated above;

"(h) That defendants be permanently enjoined from collecting, and from aiding the collecting of, in any manner whatsoever, any ad valorem tax, from plaintiffs and from their class, which tax is based on said increased assessments, made in 1972, on their

rural, real and personal property located on Macon County, Georgia;

"(i) That defendants be permanently enjoined for 1973, and in all years thereafter, from assessing any rural, real and personal property located in Macon County, Georgia, for ad valorem taxes and from collecting and from implementing the collecting of such taxes until all parcels of all classes of property, both real and personal, both tangible and intangible, whether owned by public utility companies or not, located in Georgia are:

"(aa) sought out, found, discovered, and identified, including personal property of those taxpayers who do not also own real property;

"(bb) appraised at their true, fair, real, present, cash, market value, according to the manner in which each such property is usually sold;

"(cc) assessed at the same per centage of their said true value; and

"(dd) then taxed by the state on the equalized assessment value at the same rate, or millage, regardless of local school needs;

"(j) That defendants' successors in their elective offices, or in their appointive government jobs, whether (sic) the individual defendant's category may be, be likewise restrained and permanently enjoined as indicated above; and

"(k) That plaintiffs be granted any other further relief that seems appropriate and just to the court."

i. The prayers and demands of petitioners, as to Count I, in their first set of amendments to the original complaint, on "Page J" and un-lettered Page K thereof (pp. 58 and 59, of record), are as follows:

"(ja) That the Board of Tax Assessors of Macon County, their individual members, their clerk, and everyone else be both temporarily restrained and permanently enjoined from obliterating any information, on any of the permanent property cards, the bound tax plat volumes, and their indices and from destroying any of said cards, plats, and indices, and any part of any of said cards, plats, and indices, and further, from making any new entries on said tax cards, plats, and indices, from removing any of said cards, plats, and indices from the vault and office of said local tax officials, except by order of this court, which tax cards, plats, and indices form part of the Carroll-Phelps tax appraisal system for Macon County, and that all said parties listed herein in (ja) by similarly restrained and enjoined as to any other part of said Carroll-Phelps system.";

"(jb) That none of the defendants interfere with the micro-filming of said entire Carroll-Phelps system at the earliest convenience and expense of plaintiffs, said micro-filming to be done in the presence of one or more of said local tax officials and one or more of plaintiffs, or one or more of their attorneys or other agents, somewhere in the Macon County Courthouse."; and

"(jc) That defendants Blackmon and Davis, and their agents, be both temporarily restrained and permanently enjoined from illegally intervening in the preparation of the 1972 Tax Digest of Macon County, by orders, either written or verbal, by directives, and by advise (sic), either written or verbal, which intervention is based in any manner on the so-called ratio-study which said defendants Blackmon and Davis and their agents, have intended Macon County Tax officials to ude (sic) in 1972."

j. The prayers and demands of petitioners, as to Count I, in their second set of amendments, on the second unnumbered page thereof (p. 75, of record), are as follows:

"(jd) That defendant Blackmon and his agents be temporarily restrained from receiving and approving the 1972 Tax Digest of Macon County from defendant Mrs. Hammock until a final determination of this case."

Response of Trial Court to Federal Constitutional Questions Raised

k. In response to the federal constitutional questions of due process and equal protection, raised by petitioners, the trial court, in its findings of fact, according to the ten paragraphs thereof, on pages 2, 3, and 4 of its order entered of record on October 6, 1972 (pp. 83, 84, and 85 of the record), held that the evidence proved the following facts, while ignoring and denying other facts proved, some of which also immediately follow which judgment of trial court constitutes Appendix S.

I. The tax assessment increase notices sent the six named petitioners were illegal because they did not adequately describe the land, contained no notice whatever of increases on personal property, and did not advise them of their rights to arbitrate (the trial court, here, however, completely ignoring the further pertinent, proven fact that the notices sent all other petitioners had these same three defects and were on the same notice form);

II. With a few exceptions, all rural real property assessments were increased by 54%;

III. "Almost all urban real property" assessments were increased by 8%;

IV. There were increased assessments on personal properties of petitioners, "to wit, cows, hogs, and farm machinery," while there were almost no increases on urban personal properties, including inventories (the trial court here conveniently failing to mention that the evidence was not in dispute that hogs were raised 500%, cows 200%, and tractors and farm machinery owned by farmers 100%, but

tractors and farm machinery owned by dealers 0%, and the trial court further failing to mention here that the evidence was not seriously in dispute that the biggest industry in Macon County, a frozen foods manufacturer located in one of the four municipalities of the county, not only did not receive an ad valorem tax assessment increase on its inventory in 1972, but had never been assessed and taxed on over $3,000,000.00 in inventory, which had been subject to such tax in each of several years prior to 1972, and of which the county tax assessors well knew), (and the trial court here further failing to mention that the evidence was clear that said increases of assessments on rural personal property were not only made without appraisals but in complete disregard of the depreciation manual on tractors and farm machinery supposedly in current use by the respondent State Revenue Commissioner throughout the state, and that there were simply no appraisals of urban personal properties):

V. There were "several exceptions to the guidelines" of 54% and 8% increases on rural and urban real property, respectively, as evidenced by the facts that the county tax assessors examined "all the property cards" on August 3, 1972, and on August 10, 1972, thereby showing their "intention . . . . to equalize the assessment (sic) of real property in Macon County" (the trial court here completely ignoring the evidence, which is not in dispute, that the tax assessors made their 54% and 8% increases two months earlier, i.e., on June 8, 1972, **before** they even tried to make a pretense of considering each parcel of land individually by the method of thumbing through 5300 property cards on two different nights at the county courthouse in August of 1972), (the trial court here also completely ignoring the clear evidence that there was no appraisal of any parcel of real property on the site in 1972 by anyone for the purpose of raising, or lowering, the tax assessment of that property), (and the trial court here further ignoring the clear

evidence that only about 60 of the 5300 parcels of land, i.e., something over 1%, received some variation from the 5% and 8% universal increases of June 8, 1972, which variations themselves were clearly proved to have been arbitrary and discriminatory, the first four variations, for instance, having been on four industrial-type properties located in rural areas of the county);

VI. The 1971 tax ratio study made by the respondent State Auditor was used by the county tax assessors in making said assessment increases in 1972 on both real and personal property (the trial court here equivocating as to whether or not said ratio study was even made according to the pertinent statute, i.e., Ga. Code Ann., Sec. 92-7008, when, in fact, the evidence is conclusive that it was not made according to said statute, and the trial court here further ignoring the undisputed evidence that said ratio study was strictly of real property and that its conclusions, even if valid as to land, could have in no way been a reasonable guide as to personal property tax assessment increases);

VII. There was no evidence that the real property of public utilities located in Macon County had not been properly assessed by the respondent State Revenue Commissioner (the trial court here ignoring the undisputed evidence that, as of the middle of September, 1972, the respondent Tax Receiver had not yet been informed by the respondent State Revenue Commissioner of any assessment by him on such property in Macon County, whereas the Tax Receiver had needed such assessments legally to complete the 1972 digest by April 10, 1972);

VIII. "The Board of Tax Assessors of Macon County has not pursued a policy of failing to assess personal property" (the trial court here again completely ignoring the abundant and conclusive evidence that no serious attempt had ever been made in 1972, or before, to assess and tax urban personal properties including inventories of retail

stores and inventories of several large manufacturing plants located in Montezuma, one of said four municipalities in the county, one of the tax assessors himself having testified that he was a former employee of said frozen foods concern and that he had personal knowledge that its inventory on January 1 of each year for the last several years had been approximately thirty million pounds, worth 13¢ per pound, i.e., almost $4,000,000.00, which apparently was only the cost value to the company, the fair market value of such inventory perhaps being twice as much, i.e., $8,000,000.00, there having been further testimony from the respondent clerk of the Board of Assessors that he had been denied entrance to the warehouses of said frozen foods manufacturer in January, 1972, and that nothing further had been done to assess and tax said vast inventory, which perhaps approaches in value one-tenth of the entire digest of the county, and which property is not exempt from ad valorem taxes, but which property has enjoyed illegal exemption knowingly provided by most of the county respondents, the trial court here having chosen to find as fact what the evidence clearly proved was not the fact):

IX. "There was no evidence of coercion or interference" by the Board of County Commissioners against the Board of Tax Assessors (the trial court here ignoring the testimony of the former chairman of the Board of Tax Assessors, who was even hostile to your petitioners, and also ignoring other evidence of joint meetings of the two boards and public manifestations of, at least, confusion as to their distinctly different duties and responsibilities);

X. "There was no evidence of illegal intervention" by the two respondent state officials and "specifically . . . . no evidence of any ordering" by them "to increase assessments by certain percentages" (the trial court here ignoring the wealth of evidence adduced by petitioners that all of said ad valorem tax assessment increases made on properties of petitioners in 1972 directly resulted from both

written and verbal instructions of said two state officials and their agents to said county respondents, although, as it now appears, there was never an explicit written order from the State Revenue Commissioner, as a result of his rejecting a proffered 1972 digest for Macon County, pursuant to Ga. Code Ann., Sec. 92-7001, the trial court not recognizing, in the vernacular of the day, "an offer that they couldn't refuse" as an order, the county respondents, however, obviously having understood it as an order and having proclaimed to their public that they had indeed been so ordered).

1. In summation, the trial court's response, in its findings of fact, to the federal constitutional questions raised by petitioners, was fivefold: first, to ignore, as much as possible, the overwhelmingly abundant and conclusive evidence, much of which is not even in question, as to the arbitrary and discriminatory methods of respondents in increasing the property tax assessments of petitioners, and not even to comment on it; second, to deny that the evidence was adduced; third, to admit some of the most obvious facts and then try to minimize their importance and try to explain them away; four, to use a mixture of the first three responses; and five, to ignore completely other issues of fact, such as the clear and bountiful evidence proving this to be a class action, although immediately thereafter drawing conclusions of law involving such evidence. The trial court, without doubt, in the view of petitioners, grossly abused its power in its findings of fact and grossly abused its discretion in its use of the facts.

m. The trial court's response to said federal constitutional questions, in its conclusions of law, in the twelve paragraphs thereof, on pages 4, 5, and 6 of its order entered of record on October 6, 1972 (pp. 85, 86, and 87 of the record) was to ignore, as much as possible, the federal and state constitutional provisions involved, to ignore most applicable state statutory and case law, to apply improperly

said constitutional safeguards to the true facts of the case, and to apply improperly other state statutory and case law to said facts, as follows:

I. The trial court held that, "The granting and continuing of injunctions always rests in the sound discretion of the Judge (sic), and this power shall be prudently and cautiously exercised, particularly when a whole year's finances of a political sub-division are involved, unless the law and the facts clearly demand such actions," quoting and citing **Kight v. Gilliard**, 214 Ga. 445 (1958), which basically is a sound expression of the law, but the trial court improperly applied these principles, because in **Kight v. Gilliard** the evidence was ". . . that each taxpayer's land was located and identified and **physically examined** (emphasis added) before they **placed a valuation on it** (emphasis added), generally classifying and assessing it according to the above schedule," which schedule had seven different dollar values per acre for seven different classifications of farm land and woodsland, and in which case the revaluation of all of the land in the county went on over a period of time and the value of no parcel of land was merely increased suddenly by some percentage because it happened to be listed in a particular column of the county tax digest, the trial court in the case *sub judice* here conveniently overlooking and ignoring more recent, controlling cases which explicitly outlawed tax assessment increases by fixed percentages and arbitrary sums in Georgia, which controlling cases were cited by your petitioners to the trial court, the leading cases being **Champion Papers, Inc., et al. v. Williams, Commissioner, et al.**, 221 Ga. 345 (1965), and **Register et al. v. Langdale, Commissioner, et al.**, 226 Ga. 82 (1970).

II. The trial court, in its second conclusion of law, held that a class action was not a proper remedy for your petitioners, because it might result in higher taxes for some of your petitioners, which conclusion, your petitioners re-

spectfully submit, defies understanding, unless the trial court was considering the public utilities to have been included by petitioners as members of the rural class, which they patently had not been, and unless the trial court were alluding to some possible, small increase of the assessments of the public utilities, about which there had been no evidence, which entire conclusion of the trial court is invalid because, if indeed there were some few genuine members of the class who might have, by some strange quirk of law or fact, suffered higher ad valorem taxes because of this class action, if successful, those few taxpayers could have easily been identified and excluded, or could have been given the opportunity to have asked to have been excluded, under proper directions from the trial court, which directions were not forthcoming, the trial court then, in a *non sequitur,* further concluding that this was not a class action because the six named petitioners had an adequate remedy at law in arbitration, which they patently did not, under the controlling and leading case of **Colvard, et al. v. Ridley, Commissioner, et al.**, 218 Ga. 490 (2) (1962).

III. The trial court, in its third conclusion of law, held that the exhibit of petitioners containing the signatures of "some three hundred owners of rural real property in Macon County," indicating that they wished to be considered part of this class action, which exhibit was accepted by the trial court as evidence, did "not constitute a legal manner of pleading" and that, therefore, such "three hundred" of your petitioners would not be considered as parties litigant, the trial court here ignoring the rule of law implicitly observed in all Georgia appellate cases involving the point, and ignoring the more explicit federal law on the point, that, in a class action, all the members of the class do not have to be listed in the hearing of the pleadings of the case nor is such listing even possible in most class actions, there, further, usually being no necessity even to introduce any evidence of positive af-

firmation by members of the class that they are members, the more usual evidence being negative responses from some members that they do not wish to be included, the trial court here seeming to punish petitioners for their unusual initial effort to prove that this is indeed a class action, petitioners never having labored under any notion that such an exhibit is a proper manner of adding parties litigant in cases other than a class action.

IV. The fourth conclusion of law of the trial court is correct insofar as it observes that the assessment notices sent to the six named petitioners failed to comply with state statutory law but is incorrect in concluding that arbitration is a proper remedy, the trial court, here, of course, failing to conclude, as it should have, that all notices sent to all petitioners were illegal and that a successful class action in equity was the only adequate remedy.

V. The fifth conclusion of law of the trial court entertains the challenge of petitioners to the federal constitutionality of the state statute which provides that money shall be taxed at the rate of 10¢ per $1,000.00, i.e., **Georgia Laws**, Acts 1937-38, Extra. Sess., pp. 156-159 (Ga. Code Ann., Sec. 92-116), the trial court implicitly holding, of course, that said statute is constitutional by citing cases to the effect that real property and intangible personal property may be taxed at different rates because they may be considered to be different classes of property.

VI. The sixth conclusion of law of the trial court is that the use in 1972 of the 1971 ratio study of Macon County was not illegal per se, the trial court here significantly failing to conclude, as it should have, that the manner in which said ratio study was used violated the federal constitutional guarantees to your petitioners of due process of law and equal protection of the laws.

VII. The seventh conclusion of law of the trial court is that state law would not authorize it to restrain and enjoin respondents "until **all parcels of all classes of property**" (emphasis the court's) are sought out, found, discovered, and identified, the trial court here ruling on an issue that did not need to be determined in its interlocutory decree, because petitioners had not asked for such relief as to 1972 taxes, but only as to 1973 and future years. However, inasmuch as the trial court chose to deal with the issue, and has now been affirmed by the Supreme Court of Georgia, on all issues treated by it, petitioners may not be amiss to observe that this is the ultimate issue in this case, whether or not it is now decided by the Supreme Court of the United States: Is all ad valorem taxation illegal because it cannot be administered in a constitutional manner? Petitioners contend that the trial court has answered the ultimate question incorrectly.

VIII. The eighth conclusion of law of the trial court most grossly ignores the federal constitutional provisions of due process of law and equal protection of the laws, by baldly asserting that petitioners failed to show that the county board of tax assessors "failed to assess real and personal property in Macon County, Georgia, at its fair market value" (for the moment, ignoring the fact that state law requires property to be assessed, not at its "fair market value," but at 40% of its fair market value, because the trial court here obviously means that petitioners "failed to prove the assessors' failure to assess at 40% of fair market value"), and by baldly asserting further that petitioners also failed to prove that the county board "failed to equalize property values between (sic) individual taxpayers of Macon County, Georgia." Petitioners are reluctantly compelled to observe that these two bald statements of the trial court are at complete variance with the truth.

IX. The ninth conclusion of law of the trial court is just about as grossly untrue as the eighth. The assertion that "the method" of the county tax assessors "is not unconstitutional either under the United States or Georgia Constitutions (sic)" is completely incorrect, and the explanation that the county board "considered each parcel of property on the tax books in Macon County, as returned by the property owners," is partly misleading and partly simply false. The trial court appears to be trying to convey the impression that each parcel of property was actually appraised anew, or at the very least examined individually by the assessors, when, in fact, the evidence is clear that the nearest thing to individual consideration that each parcel of property got was for each of the five assessors to look through some of the real property cards of property located in his area of the county on two different nights at the county courthouse, two months after they had increased all real property assessments by 54% on rural land and 8% on urban land, the trial court having been well aware that the county tax assessors never examined the tax returns of the taxpayers, as they are required by law to do and required to do before June 1, which is the deadline for increasing assessments, which increases must be attached to the tax returns.

X. Reluctantly petitioners are compelled again to observe that the trial court's tenth conclusion of law is also false and misleading. The trial court held that it was not discriminatory for the assessors to increase the assessments on the livestock inventories of farmers by 200% and 500%, while failing "to increase assessments of most of the inventories of stores," as long as the increases on farmers tended to equalize ad valorem taxes on personal property, the trial court here blithely ignoring several millions of dollars of untaxed frozen foods located on the premises of only one urban taxpayer, to say nothing of other urban inventories apparently also untaxed.

XI. In its eleventh conclusion of law, the trial court holds that "the effort to equalize tax assessments . . . by the local tax officials does not constitute a violation . . ." of federal due process and equal protection, "nor does" it "attempt to violate" the equal taxation provision of the state constitution, the trial court here seeming to have made a sub-conscious slip, revealing perhaps that all the trial court really wanted to say, and all it really could have truthfully and correctly said, was that the county officials had good intentions. Petitioners' federal constitutional rights were nevertheless trounced upon by respondents.

XII. The trial court's twelfth conclusion of law once again incorrectly holds that arbitration provided the six named petitioners an adequate remedy at law.

n. Petitioners are reluctantly compelled to observe that, in summation, the trial court's response, in its conclusions of law, to the federal constitutional questions raised by petitioners, was to freely flout the federal principles of due process of law and equal protection of the laws.

o. In its interlocutory order, at the end of the entire judgment entered of record on October 6, 1972, which order is supposedly based on its findings of fact and conclusions of law, the trial court, in the twelve paragraphs thereof, on pages 6, 7, 8, and 9 (pp. 87, 88, 89, and 90 of the record), responded to the federal constitutional questions raised by petitioners by denying petitioners any substantial relief, as follows:

I. The trial court ordered the respondent Board of Tax Assessors to notify the six named petitioners "of the increase in tax assessments in the 1972 tax rates (sic) in accordance with Code Section 92-6911" and further ordered the board to "follow Code Section 92-6912 . . . so as to provide arbitration . . . should any . . . demand arbi-

tration . . .," which provision, as aforesaid, failed to provide due process and equal protection even to the six named petitioners, to say nothing of the hundreds, if not thousands, of your other petitioners.

II. In its second paragraph, the trial court denied the demand of petitioners to temporarily restrain respondent Blackmon from increasing the ad valorem tax rate in Macon County in 1972 under a provision in one of the "equalization" statutes under attack as violating the federal constitution, i.e., **Georgia Laws**, Acts 1972, page 174 (Ga. Code Ann., Sec. 92-7001 [c]), the trial court holding that it is not unconstitutional for the state legislature to delegate its power to tax to an official in the executive branch of "State Government" (sic), which denial and ruling denied your petitioners federal due process and equal protection.

III. In its third paragraph, the trial court denied petitioners' demands that the respondent Tax Receiver be temporarily enjoined from using the arbitrary and discriminatory assessments in the 1972 tax digest, that the respondent State Revenue Commissioner be temporarily enjoined from approving a 1972 digest for Macon County based on such unconstitutional assessments, and that the respondent Sheriff and respondent Tax Collector be temporarily enjoined from collecting ad valorem "taxes" for 1972 from your petitioners based on such unconstitutional assessments. The trial court also denied the demand that all respondents be temporarily enjoined from doing any act toward implementing the collection of taxes based on the 1972 unconstitutional assessments. These denials of demands for equitable relief for your petitioners are a clear denial of their federal constitutional rights to due process of law and equal protection of the laws.

IV. In its fourth paragraph, the trial court repeated its denial of the demand to enjoin respondent Blackmon from

increasing the ad valorem tax millage rate, the trial court apparently having forgotten that it had already so denied your petitioners in its second paragraph, for petitioners can detect no difference in the two paragraphs except that the fourth does not contain the ruling on the constitutionality of said Georgia statute.

V. In its fifth paragraph, the trial court held that "the method of equalization of assessments employed by local tax officials of Macon County, Georgia is . . . constitutional, contrary to the prayer of plaintiffs in Count II of its (sic) complaint," which ruling of the trial court was a gross and abusive denial of the federal constitutional rights of your petitioners to due process of law and to equal protection of the laws.

VI. In the sixth paragraph of its interlocutory order, the trial court denied petitioners' demand to enjoin temporarily the respondent Tax Receiver from submitting to the respondent State Revenue Commissioner a 1972 Macon County tax digest based on said unconstitutional assessment increases, the trial court once again denying to petitioners due process and equal protection.

VII. In its seventh paragraph, the trial court apparently denied the demand that respondents and **their successors in office** be temporarily enjoined from implementing the collection of taxes based on said 1972 unconstitutional assessment increases ("apparently" because the one-sentence paragraph is garbled, petitioners respectfully observe, as are paragraphs 3, 4, 6, 9, 11, and 12), the trial court still further denying due process and equal protection to petitioners.

VIII. In its eighth paragraph, the trial court temporarily enjoined respondents, and other employees of the Board of Tax Assessors, from erasing and obliterating information to be found in the permanent, real property card system established in 1963 and 1964 by a professional ap-

praisal company at great expense to the county, and further enjoined them from destroying any part of said appraisal system, of which relatively small relief petitioners do not complain.

IX. In its ninth paragraph, however, the trial court denied petitioners' demand that respondents be temporarily enjoined from removing any part of said real property tax record system from the vault and office of said local tax officials, except by order of the trial court, which demand petitioners think was reasonable but which is of no great consequence here.

X. In its tenth paragraph, the trial court temporarily enjoined respondents from interfering with the micro-filming of said property card record system by petitioners, of which minor relief petitioners do not complain.

XI. In the eleventh paragraph of its interlocutory order, the trial court denied the demand of petitioners that the state respondents Blackmon and Davis be temporarily enjoined from illegally interfering in the preparation of the 1972 Macon County tax digest by county respondents, which illegal interference consisted primarily, according to petitioners' complaint and demand, of **directing** county respondents to "factor" their digest columns 17 and 19, which are respectively the columns in which all rural real property and all urban real property are listed, by 54% and 8% respectively, which **directing** to "factor" consisted of repeated insistence verbally and in writing by the two respondent state officials and their agents to the county respondents, just short of an explicit written order by respondent Blackmon under Ga. Code Ann., Sec. 92-7001 and Sec. 92-7002, and of course, the county respondents were also **directed** in the same manner to "factor" the digest columns containing rural personal properties by the arbitrary and discriminatory percentages as aforesaid; the trial court explaining this particular denial of relief by ruling that it has found "no evidence whatsoever of any

illegal intervention" by respondents Blackmon and Davis, which can only mean that the trial court determined said described intervention to have been "legal", and therefore constitutional, because petitioners fully informed the trial court by competent and voluminous evidence of the roles of said state respondents in the "factoring" of the so-called 1972 Tax Digest of Macon County and the notable failure of the ever-present agents of respondent Blackmon to direct that legal notices be sent to petitioners of the "factored" tax assessment increases; which denial of relief and ruling have deprived petitioners, and still deprive them, of their federal constitutional rights of due process of law and the equal protection of the laws.

XII. In its twelth and last paragraph, the trial court denied petitioners' "motions and prayers," i.e., their demands, that "certain portions of the statutes of the State of Georgia" be declared unconstitutional, the trial court holding specifically that the "tax ratio study" statutes, i.e., Ga. Code Ann., Sec. 92-7008, have "no application to the issues in this action" and generally holding "other statutes . . . to be constitutional," the first of which two rulings is simply incorrect because the ratio study is now the basic tool being used by the respondent State Revenue Commissioner in the ill-fated equalization" program, without which he would have no information, whether good or bad, on which to base his "advice" and orders to "factor" the 159 county tax digests, and the second of which is a further ruling by the trial court on the federal constitutionality of the Georgia statute codified as Sec. 92-116, which taxes money at 10c per $1,000.00, a further constitutional ruling on that part of Sec. 92-7001(c) providing for the State Revenue Commissioner to raise any county property tax millage rate under certain circumstances of the "equalization" program, an initial constitutional ruling by the trial court on the balance of Sec. 92-7001 and Sec. 92-7002 (which two code sections were first attacked in paragraph 20 of petitioners' original complaint, page 5 thereof,

page 9 of the record), and an initial refusal to rule on the constitutionality of Sec. 92-7008, coupled with said disclaimer of the applicability of Sec. 92-7008, in addition to the trial court's sixth conclusion of law that the use of the 1971 ratio study in Macon County in 1972 was not illegal per se; all of which Georgia statutes so codified being under direct attack as being in violation of the federal constitution; said last denials and rulings of the trial court being violation of petitioners' federal constitutional rights to due process of law and equal protection of the laws.

p. In summation, petitioners are reluctantly compelled to observe that the trial court, in its interlocutory order, based on its findings of fact and conclusions of law, further freely flouted the federal constitutional provisions of due process and equal protection which are petitioners' birthright.

When, Where, and in What Manner Federal Questions Raised in Supreme Court of Georgia

q. Petitioners initially, though generally, raised the federal constitutional questions in the Supreme Court of Georgia, on October 11, 1972, on the first page of their "Summary of Application for Stay," in paragraph C, but more precisely raised them on page 4, in sub-paragraph o of paragraph 2, in "**Part One: Statement of the Case, A. Jurisdiction**" of their "Application for Stay" submitted on the same date, wherein petitioners stated to the court the following:

"2.

"The appeal and this application for a stay involve the interpretation of the following: . . .

"(o) The United States Constitution, Article XIV, Section 1, providing that no state shall deprive any person of property without due process of law, nor deny any person the equal protection of the law;"

r. Then in paragraph 4 on pages 5 and 5A of said application for stay to the state court, petitioners further stated that the recent denial by the trial court of relief "... will have deprived appellants, and their class, of their constitutional rights to due process of law and of equal protection of the laws ..."

s. In their section on argument and citation of authority of said application for stay, on pages 34, 35, and 36, petitioners pointed out to the Supreme Court of Georgia how the methods of the county assessors violated the federal constitution and cited to it **Greene v. L. & L. R. Co.**, 244 U. S. 499, 501, wherein the Supreme Court of the United States said that "... the duty to assess at full value is not supreme but yields to the duty to avoid discrimination."

t. On said pages 35 and 36, **Hutchins, et al., v. Howard, et al.**, 211 Ga. 830, was cited, in which the Supreme Court of Georgia had said the following:

> "There is no merit in the defendants' contention that the plaintiffs and intervenors have an adequate and complete remedy by arbitration. To resort to arbitration under the provisions of Code Sec. 92-6912 would be abortive and remediless, since the issue in this case is not as to the correct valuation of the property in question, but whether or not the tax assessors acted without lawful authority in putting into effect a plan or scheme to systematically increase without uniformity the taxpayers' returns for 1955, in violation of the uniform-taxation clause of the Constitution of 1945, and thereby deprive them of their legal right to equal protection as guaranteed by the State and Federal Constitution; and, since this is an issue or legal question that the board of arbitrators would be without authority to determine, relief could be had only by a petition in equity . . ."

Response of the Supreme Court of Georgia to Said Federal Questions When Raised in Application for Stay on October 11, 1972

u. The response of the Supreme Court of Georgia to the federal constitutional question raised in petitioners' 39-pages long application for stay and its six-pages long summary was to deny the application on October 12, 1972, without a hearing.

When, Where, and in What Manner Federal Questions Raised in the Supreme Court of Georgia, Subsquent to Denial of Application for Stay on October 12, 1972

v. Petitioners, in their "Enumeration of Errors" filed on December 18, 1972, raised the federal constitutional questions in the Supreme Court of Georgia, by implication by the entire enumeration and implicity in several other of their 39 enumerations, but explicitly in five of said enumerations, i.e., 24, 26, 29, 32, and 37, as follows:

> "24. The trial court erred in concluding as a matter of law that 'the method of tax assessments in Macon County, employed by the local taxing officials of Macon County is not unconstitutional' because they considered each parcel of property 'as returned by the property owners' and made adjustments 'as set out in the minutes of the Board' (R-87, paragraph 9).";
>
> "26. The trial court erred in concluding as a matter of law that 'the effort to equalize tax assessments of real and personal property in Macon County by the local tax officials does not constitute a violation of either the equal protection clause nor the due process clause of the 14th Amendment to the U. S. Constitution,' nor 'violate Article VII, Section I, paragraph (sic) III of the Constitution of the State of Georgia (Section 1-5403 of the Code of Georgia of 1933, as amended)' (R-87, paragraph 11).";

"29. The trial court erred in refusing to restrain or enjoin appellee Blackmon from increasing the ad valorem tax rate in Macon County under apparent authority of 'an Act of the General Assembly (1972 Ga. Laws 174),' the court holding said statute to be constitutional, all as set out by the trial court in paragraph 2 of said order dated October 5, 1972 (R-88).";

"32. The trial court erred in declaring the method of equalization of assessments employed by local tax officials of Macon County, Georgia, to be constitutional, all as set out in paragraph 5 of said order dated October 5, 1972 (R-88)."; and

"37. The trial court erred in declaring 'certain portions of the statutes of the State of Georgia,' namely, 'the Acts of the General Assembly for 1970, pages 542, 549, as amended by the General Assembly (1972 Ga. Laws, pp. 829-833)' to have no application to the case at bar and also to be constitutional, and further erred in declaring 'other statutes' to be constitutional, all as set out in paragraph 12 of said order dated October 5, 1972 (R-90)."

w. Petitioners, in their "Statement of Jurisdiction," acompanying their said "Enumeration of Errors," again explicitly raised the federal constitutional questions, in the Supreme Court of Georgia, in sub-paragraph o of paragraph C, on pages 10 and 12, and in paragraph E on page 14, as follows:

"C.

"THE APPEAL INVOLVES THE INTERPRETATION OF THE FOLLOWING: . . .

"(o) The United States Constitution, Article XIV, Section I, providing that no state shall deprive any person of property without due process of law, nor

deny any person the equal protection of the laws (R-78-80):":

"E.

"The appeal is further authorized because the trial court, by its order dated October 5, 1972, has denied that this is a class action and has denied each and every prayer and demand of appellants for relief by either an interlocutory or permanent injunction except that appellees have been 'temporarily enjoined from erasing or obliterating any of the information on the permanent property cards . . .' etc. and 'temporarily enjoined from interfering with the micro-filming of said entire Carroll-Phelps system . . .' etc., which denial for relief by the trial court has deprived appellants, and their class, of their constitutional rights to due process of law and of equal protection of the laws, for which deprivation they do not have, and will not have, an adequate remedy at law."

x. Petitioners again raised said federal questions in their "Brief of Appellants," filed on December 18, 1972. However, petitioners' supplemental brief which was filed the very next day, i.e., December 19, 1972, entirely superseded the first brief, and petitioners respectfully submit that the first brief may be disregarded. Therefore, hereinafter, when reference is made to "petitioners' brief," the reference is to said more complete brief filed on December 19, 1972, especially inasmuch as petitioners also filed a long supplemental brief on February 8, 1973, to which reference must also be made later.

y. Petitioners explicitly, and at some length, i.e., nine pages, again raised the federal questions of constitutionality of the methods of respondents, in section F of their arguments and citations of authority in their brief (pp. 8-17), which section F is included herewith as Appendix M.

z. Petitioners again explicitly raised the federal constitutional questions in section G of their arguments and citations of authority in their brief (pp. 17-19), which section is entitled "Inapplicability of Arbitration," which section G is not appended because the most significant part of it is the quotation from **Hutchins, et al. v. Howard, et al.**, 211 Ga. 830, headnote 3, which has just been quoted to the court above in paragraph t, as an extract from petitioners' application for stay to the Supreme Court of Georgia.

aa. Oral argument was made by petitioners on January 9, 1973, in which the federal questions of due process and equal protection of the laws were again raised, as best counsel can recall, and then, before an opinion was rendered, petitioners filed, on February 8, 1973, a supplemental brief 94-pages long, in which the federal constitutional questions were raised again, implicitly throughout the brief, and explicitly, as follows: in "**Part One: Statement Of The Case,**" in section B thereof on "Issues Of Law And Equity" (pp. 21-23), which section B of Part One is included herewith as Appendix N; in "**Part Three: Argument And Citation Of Authority,**" in section C thereof entitled "Dismissal of Complaint As To Appellees Blackmon and Davis" (pp. 62-71), which section C of Part Three constitutes Appendix O included herewith; in section E of said Part Three, which section E is entitled, "Is All Ad Valorem Taxation Illegal Because It Cannot Be Administered In a Constitutional Manner?" (pp. 84-94) and which section E constitutes Appendix P of this petition for certiorari.

Response of the Supreme Court of Georgia to the Federal Constitutional Questions Raised by Petitioners by Enumeration of Errors, Brief, Oral Argument, and Supplemental Brief

bb. Petitioners respectfully submit that the Supreme Court of Georgia did not respond to petitioners' raising of the federal constitutional questions of due process of law

and equal protection of the laws as to the methods employed by respondents, but, on the contrary, evaded these federal question as to methods, while affirming the trial court's overruling of petitioners' attacks upon the constitutionality of the various state statutes, as indicated in the opinion dated February 22, 1973 (Appendix A).

Where, When, and in What Manner Federal Questions Raised in the Supreme Court of Georgia Subsequent to Opinion of February 22, 1973

cc. On March 5, 1973, petitioners' 44-pages long motion for rehearing was filed, in which petitioners again and again raised the federal questions of due process of law and equal protection of the laws as to the methods of respondents, as well as to the state statutes considered by petitioners to be in violation of the United States Constitution. A copy of said motion is submitted as Appendix Q and petitioners respectfully ask this court to consider it, not only for the many references to the federal questions involved, but also because it contains a good summary of the facts and laws involved, as well as an analysis of the opinions rendered in the case at bar and the cases from Fayette County and Brooks County, Georgia.

Response of the Supreme Court of Georgia to Federal Questions Raised Again in Motion for Rehearing

dd. Petitioners respectfully submit that the response of the Supreme Court of Georgia, to the federal constitutional questions being repeatedly brought to its attention in their motion for rehearing, was simply to ignore them once again. The motion was denied on March 15, 1973 (Appendix B).

8

DIRECT AND CONCISE ARGUMENT FOR GRANTING WRIT [Rule 23, 1.(h)]

a. Under Rule 19 (a), the court may, in its discretion, review the decision of the state court because the state court "has decided a federal question of substance not theretofore determined by this court" and because the state court "has decided the case in a way probably not in accord with applicable decisions of this court."

b. The latest decision of the Supreme Court of the United States, known to your petitioners, which should have controlled the decision of the Supreme Court of Georgia in the case *sub judice* is Fuentes v. Shevin, 407 U.S. 67, a late 1972 case holding that due process requires that parties whose property rights are affected are entitled to a hearing, that to enjoy that right they must be notified, and that the notice must be made in a meaningful manner and the hearing granted at a meaningful time.

c. The Georgia case, decided by the Supreme Court of the United States, which is closest to the case at bar in facts and issues of law, as best petitioners have found, is **Central of Georgia Railroad v. Wright**, 207 U.S. 127 (1907), in which the U. S. Supreme Court reversed the Georgia Supreme Court which had affirmed the Georgia trial court in refusing to enjoin the ad valorem tax execution on property of the railroad company, in which case the taxpayer railroad company had not been given the constitutionally required notice of a new tax assessment and consequently had had no opportunity to be heard to contest the new assessment.

d. Several other cases decided by this court, which constitute authority that petitioners were entitled to notices and hearings, which cases were applicable to the case at

bar and should have controlled the Supreme Court of Georgia, but which cases were not applied by the state court, are:

McGregor v. Hogan, 263 U.S. 234 (1923);
Turner v. Wade, 254 U.S. 64 (1920), 65 L. Ed. 134, 41 Sup. Ct. Rp. 27;
Hagar v. Reclamation Dist. No. 4, 108 U.S. 701, 2[illegible] L. Ed. 569, 4 Sup. Ct. Rp. 663;
Norwood v. Baker, 172 U.S. 269.

e. The Supreme Court of Georgia did not explicitly decide the issue of whether or not petitioners do indeed have a class action. Division 2 of the opinion (Appendix A) seems perhaps at least to hold implicitly that this is a class action, because the state court says that, "The issue as to taxpayers other than the plaintiffs . . . is moot . . .," and it appears that the opinion uses the term "plaintiffs" to mean the six named petitioners.

f. Petitioners respectfully submit that there would be no need for division 2 of said opinion if indeed the Supreme Court of Georgia were not thereby implicitly holding this to be a class action, unless division 2 is interpreted as a recognition by the Supreme Court of Georgia of the validity of Count II of petitioners' complaint in the trial court, as amended.

g. However, inasmuch as petitioners cannot know what the Supreme Court of Georgia has ruled as to whether or not this is a class action, assuming the worst, i.e., that it has ruled negatively, the Supreme Court of Georgia then has not properly applied the following cases on class actions, decided by this court, and others, to the case at bar:

Eisen v. Carlisle and Jacquelin, 391 F. 2d, pp. 555 and 560;
Hansberry v. Lee, 311 U.S. 32;
Richland v. Cheetum, 272 Fed. Supp. 148;

Montgomery Ward and Co. v. Langer, 168 F. 2d 182;
Culver v. Bell and Loffland, 146 F. 2d 29;
Green v. Wolf Corp., 406 F. 2d 291;
Epstein v. Weiss, 50 F.R.D. 387;
Escott v. Barchris Construction Corp., 340 F. 2d 731 (2d Cir. 1965), Cert. Den. 382 U.S. 816, 86 S. Ct. 37, 15 L. Ed. 2d 63 (1966);
Mullane v. Central Hanover Bank and Trust Company, 70 S. Ct. 652, 339 U.S. 306, 94 L. Ed. 865 (1950);
Dolgow v. Anderson, 43 F.R.D. 472 (D.C.N.Y. 1968).

h. The essential rules for a class action, as enunciated in the above cases, and in others, are: that there must be one or more named plaintiffs, whose interests in the litigation are representative of the interests of the class; that the named plaintiffs are not likely lightly to abandon the litigation; that the class is represented by competent counsel who can and will vigorously represent the interests of the class; that the trial court has the duty to establish rules in each case to determine who are and who are not members of the class, if there is any question about the membership of the class; and that the trial court shall look with suspicion on any pleading or act of any of the named plaintiffs, or of counsel for the class, which appears to jeopardize intentionally the interests of the class, and to protect the class from such apparent abandonment of their interests by their fellow litigants or their counsel.

i. Petitioners respectfully contend that all the basic elements of a class action were met, and are still met, by petitioners.

j. In the trial court respondents did not raise the issue of whether or not this is a class action, beyond a perfunctory disclaimer of knowledge of the allegation and a denial in their defensive pleadings (pp. 38, 69, in record of pleadings, responding to paragraphs 20 and 21 of the original complaint of petitioners, p. 9 of record). However, the trial

court itself raised the issue and asked for briefs on the subject, which were submitted after the interlocutory hearing.

k. However, the trial court never directed or suggested any guidelines to determine who were not members of the class, before its general interlocutory order of October 6, 1972, which held that it was not a class action, although said 137 "refused" and "rejected" tax assessment increase notices and said petition with over three hundred signatures of members of the class were admitted into evidence and may be found in the transcript on pages 230-245 and pages 324-372.

l. Respondents Blackmon and Davis, the state officials, still did not consider whether or not this is a class action an issue in the Supreme Court of Georgia (page 3 of their brief), although the respondent county officials did consider it an issue at the appellate stage (unnumbered page 4 of their brief).

m. Ga. Code Ann., Sec. 81A-123(a) (1), (Acts 1966, pp. 609, 632), provides for class actions in Georgia, but petitioners know of no pertinent appellate ruling in Georgia which amplifies the meaning of the statute and assume, therefore, that said federal cases are controlling without need to relate them to any Georgia appellate decision, except that numerous Georgia decisions in ad valorem tax cases seem to treat them as class actions without ever calling them class actions and without the issue having ever been raised by either side, nor by the trial court, nor by the appellate court, such as the following:

Register et al. v. Langdale, Commissioner, et al., 226 Ga. 82 (1970);

Colvard et al. v. Ridley, Commissioner, et al., 219 Ga. 361, 364 (1963);

Hollis v. Parrish, 228 Ga. 161 (1971);

Hutchins et al. v. Howard et al., 211 Ga. 830 (1955);

Green, Tax Assessor, et al. v. Calhoun et al., 204 Ga. 550 (1948);

Champion Papers, Inc., et al. v. Williams, Commissioner, et al., 221 Ga. 345 (1965).

n. Furthermore, the Supreme Court of Georgia treated the Fayette County and Brooks County cases as class actions, and in the latter case, there were only five named plaintiffs, although there were 214 named plaintiffs in the Fayette County case.

o. Nevertheless, the Supreme Court of Georgia, in said Fayette-Brooks cases, by holding their county digests to be illegal because of the "digest column factoring," all of the owners of rural property in those two counties got relief, not just the 214 plaintiffs in Fayette County and not just the five named plaintiffs in Brooks County.

p. Furthermore, no one made an issue of whether or not they were class actions in the Fayette-Brooks cases, least of all the trial court judges for those two counties. It was obvious from the pleadings that there was a class involved in each of the two cases, just as it was obvious from the pleadings in the case at bar, and your petitioners went to greater effort by far to plead and prove a class action, than the ad valorem taxpayers did in said other two cases.

q. Nevertheless, the Superior Court of Macon County, the trial court, held this case not to be a class action and thereby denied the entire class any substantive injunctive relief, while throwing a sop, a crumb of justice, if the court will allow the phrase, to the six named petitioners in the form of arbitration, for which petitioners have never pleaded, but which arbitration each of the six won so resoundingly that the Board of Tax Assessors of Macon County has appealed each and every one of the six arbitration awards to the Superior Court of Macon County,

the same court that denied petitioners any substantive justice initially.

r. Furthermore, said county tax assessors hired an expensive out-of-county attorney to pursue these six appeals in the May Term, 1973, of said courts, as if to overawe your petitioners as much as possible and make the pursuit of justice for them financially infeasible, if not impossible, and as if, finally, to deny justice of any sort to every last one of your petitioners, and especially perhaps to the six who were bold enough to seek simple justice by having their names used throughout the litigation.

s. However, what is even more incomprehensible to petitioners, in comparing their case to the Fayette-Brooks cases, is that the case at bar was filed in middle August of last year; and the Brooks County case was not filed until late October, and the Fayette County case was not filed until early December.

t. Yet the Supreme Court of Georgia said nothing about either of those cases being moot, knowing full-well that some money had been paid by well-meaning plaintiffs in those class actions, because, if for no other reason, the Supreme Court of Georgia had issued a stay in each case blocking the injunctive relief that Judge Calhoun and Judge Whalen had seen fit to grant the aggrieved ad valorem taxpayers in those two counties.

u. However, the Supreme Court of Georgia, on February 22, 1973, in division 2 of its opinion, held this case from Macon County to be moot ". . . since such taxes were due December 20, 1972, and have been paid, even according to the appellants in a supplemental brief filed in this court, . . ." and then tacks on the phrase "by some taxpayers of Macon County," in a manner so that anyone reading the opinion in the future might interpret the sentence to mean the following: "All ad valorem taxes under the 1972 Tax Digest of Macon County had been

paid by February 22, 1973, and appellants themselves admitted this to be true in a supplemental brief. Incidentally the supplemental brief was filed by some taxpayers of Macon County."

v. The Supreme Court of Georgia also mentions, in division 2, that property taxes are due in Macon County on December 20, as if this fact were significant. However, it is not significant because property taxes are also due in Fayette County and Brooks County on December 20 and in most other counties in the state.

w. If the Macon County case was moot on February 22, 1973, with more than $69,000.00 in illegally claimed ad valorem taxes still unpaid, with much of it supposedly owed by petitioners, after petitioners had diligently and properly pursued their equitable remedy for more than six months and had been denied, by the only state courts that could have granted it, the temporary injunctive relief sought, there will be very little need in the future for aggrieved ad valorem taxpayers to seek relief in the courts of the State of Georgia, unless the Supreme Court of the United States grants relief to your petitioners.

Argument as to the Constitutionality of the Georgia Statutes Attacked

x. The Georgia statutes set out verbatim in Appendix F, which are codified as Ga. Code Ann., Sec. 92-7001 and Sec. 92-7002, are in violation of the federal constitution, regardless of the tortured interpretation placed on them by the Supreme Court of Georgia in **Griggs v. Greene** (Appendix E), in an effort to save these "equalization" statutes, because the interpretation virtually says "night is day," and because the interpretation still allows the State Revenue Commissioner to order, explicitly in writing, the tax officials of a county to increase the total amount of the current digest for that county, which written order

will necessarily be made after June 1 of the current year, because such written order cannot be issued until after the county digest has been submitted for approval to the State Revenue Commissioner by the Tax Receiver of the county and after it has been rejected by the State Revenue Commissioner.

y. The Tax Receiver is required by law to have completed the digest by April 10 of each year, then immediately to lay it before the county board of tax assessors for their examination, and then to submit it immediately after June 1 to the State Revenue Commissioner, the county assessors being required by statute to make all assessment changes, up or down, by June 1 and none thereafter, the statute being mandatory. (See Ga. Code Ann., Sec. 92-6917, in Appendix J.)

z. Yet said interpretation in **Griggs v. Greene** contemplates and allows county tax assessors to be altering property tax assessment as long after June 1 as it may become necessary to increase enough individual assessments to get the total of the county digest up high enough to satisfy the percentage increase explicitly ordered in writing by the State Revenue Commissioner.

aa. However, if aggrieved taxpayers, the total value of whose properties exceeds 5% of the total digest of the county, are in the process of appealing the increased assessments, now to the new County Board of Equalization (which would no more provide an adequate remedy at law than arbitration), or are seeking relief in equity, the State Revenue Commissioner is prohibited by statute from approving the county digest when it is again submitted to him, he also being so prohibited at the time of the initial submitting of the digest. (See Ga. Code Ann., Sec. 92-8407.1, in Appendix J.) (Of course, respondent Blackmon was so prohibited in 1972 due to the class action of petitioners.)

bb. Therefore, the statutes in Appendix F violate federal due process and equal protection because of the above administrative impossibilities created by them and by said interpretation in **Griggs v. Greene.**

cc. However, the more important argument that they are unconstitutional is that, under the doctrine of **Griggs v. Greene,** the county tax assessors are going to be coerced into "factoring" their digest columns just as they were in Macon County in 1972. It will simply be impossible, due to the time problem and the lack of trained personnel, for the county assessors to increase their digests enough to satisfy the State Revenue Commissioner except by "factoring."

dd. Apparently no lawyer involved on either side, and no judge involved, in the three tax cases from the counties of Macon, Fayette, and Brooks, interpreted these statutes in the strained manner of the Supreme Court of Georgia, nor apparently did they even contemplate the possibility of such an interpretation, and Judge Marcus B. Calhoun, in the Brooks County case (See Appendix K) held these statutes (in Appendix F) to be in violation of the federal constitution. Petitioners, of course, agree with Judge Calhoun.

ee. As to the ratio study statutes codified as Ga. Code Ann., Sec. 92-7008 (Appendix G), the main reason that they violate due process of law and equal protection of the laws under the federal constitution is the provision contained therein that any delinquency found as to real property assessments shall be used also as to personal property assessments. This is arbitrary and discriminatory.

ff. But further, said statutes of Appendix G are grossly discriminatory in that no similar provisions are made to study tax assessment delinquencies of personal properties throughout the state.

gg. As to the statute codified as Ga. Code Ann., Sec. 92-116 (Appendix H) providing that money shall be taxed in

Georgia at the rate of 10¢ per $1,000.00, such a provision has no social justification. Even if it is federally constitutional for Georgia to provide, in its own constitution, that money, as intangible personal property, be treated as a different class of property from land, there is still no viable social reason for such a tax disparity in Georgia as has occurred in Macon County, i.e., 10¢ on $1,000.00 in money against over $11.00 on $1,000.00 worth of land.

hh. These statutes, as found in appendices F, G, and H, should be held to violate the federal constitution.

9

MISCELLANEOUS MATTERS

a. There is included as Appendix R petitioners' "Notice of Petition for Writ of Certiorari and Application for Stay," with certificate of service, which notice was submitted for filing on March 16, 1973, to the Supreme Court of Georgia.

10

AS TO SUCCESSORS IN OFFICE AMONG RESPONDENTS

a. Respondent Tax Collector J. H. Patterson died recently, and respondent Mrs. E. D. Hammock is no longer the Tax Receiver but the Tax Collector, whereas Mrs. Helen B. Hall is now acting as the Tax Receiver.

b. Further, respondent W. H. Guerry is no longer Clerk of the Board of Commissioners, and respondent Bruce P. Hill is now serving as the Clerk of the Board of Commissioners and as Clerk of the Board of Tax Assessors.

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OPPORTUNITY FOR ORAL ARGUMENT NEEDED AND REQUESTED

a. Petitioners respectfully submit that an opportunity for oral argument should be granted them, before a decision is made on their petition for a writ of certiorari, and that oral arguments would be beneficial to the court as to its decision.

b. Further, petitioners need, and are entitled to, an injunction which will temporarily enjoin respondents from collecting, and from implementing the collection of, in any way, any money claimed by the Tax Collector of Macon County, Georgia, as ad valorem taxes based on the compilation of names and numerals now serving as the 1972 Tax Digest of Macon County, Georgia, until after such time as this petition for a writ of certiorari from petitioners might be fully considered by this court, and oral arguments are needed as to this, as well as to a further temporary injunction as to 1973 taxes, to which petitioners are also entitled.

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NO STAY AND NO INJUNCTION NOW IN EFFECT

a. There is no order of any court now in effect restraining or enjoining any of respondents from collecting any money as ad valorem taxes under the allegedly unconstitutional 1972 Tax Digest of Macon County, Georgia.

b. Consequently, if the granting by the court of a writ of certiorari is to provide substantial relief to petitioners, temporary injunctions, as just above indicated, would be most helpful.

CONCLUSION

Wherefore, Petitioners Respectfully Pray that a writ of certiorari be issued to the Supreme Court of the State of Georgia to review its judgment of February 22, 1973, in this case, that said Georgia statutes be declared unconstitutional, that said temporary injunctions be issued to respondents, that said decision of the Supreme Court of Georgia be reversed with instructions, and that petitioners be granted any other and further relief that seems just and appropriate.

Respectfully submitted,

CARL P. SAVAGE, JR.
104½ West Railroad Avenue
P. O. Box 431
Montezuma, Georgia 31063
Telephone: (912) 472-8265
Counsel for Petitioners

APPENDIX

APPENDIX A

27682. Cox et al. v. Blackmon et al.

Nichols, Justice. I. P. Cox and five other owners of rural real property in Macon County, Georgia brought an action denominated as a class action in which they sought relief from re-evaluation of rural property for ad valorem tax purposes for the year 1972 and future years. One of the allegations was that the re-evaluation notices sent to the plaintiffs did not comply with statutory requirements. The trial court, after hearing, required the defendant board of tax assessors to give the plaintiffs notice as required by law so that they could proceed with arbitration, but refused their prayers to treat the claim as a class action, or to enjoin the submission of the tax digest to the State Revenue Commissioner for approval or to grant other specific relief sought, although some other incidental relief was granted. The plaintiffs applied for, but were denied the grant of a supersedeas. The complaint attacked the constitutionality of various statutes.

1. Assuming, but not deciding, that the attacks upon the statutes were sufficient to properly raise the issue of their constitutionality in the trial court, yet under the decision in **Griggs v. Greene**, 230 Ga. 257, the trial court properly overruled the attacks upon those statutes, the constitutionality of which was expressly passed upon in that case, and under the rationale of such decision the attacks upon other statutes dealing with the equalization of assessments between various counties were properly overruled.

(a) The attacks upon those statutes treating tangible and intangible personalty as different classes of property for ad valorem tax purposes are controlled adversely to the appellants by the decision in **Mitchell v. Miller**, 226 Ga. 892 (3) (178 SE2d 175), and the cases there cited.

2. The issue as to taxpayers other than the plaintiffs for the year 1972 is moot since such taxes were due December 20, 1972 and have been paid, even according to the appellants in a supplemental brief filed in this court, by some taxpayers of Macon County and the digest for 1972 has been approved by the Revenue Commissioner. Compare **Grafton v. Turner**, 227 Ga. 809 (183 SE2d 458), as to the effect of such approval. As to the failure of taxpayers other than the plaintiffs, to seek arbitration and as to correctness of the trial court in refusing to enjoin the collection of any taxes for the year 1972, see **Kight v. Gilliard**, 214 Ga. 445 (105 SE2d 333), and cits.

3. The judgment of the trial court requiring the taxing authorities of Macon County to permit arbitration for the plaintiffs gave them complete relief for the year 1972. Under the decision in **Griggs v. Greene**, supra, had the evidence demanded a finding that assessments were raised arbitrarily under the direction of the State Revenue Commissioner in varying percentages upon the same class of property, a reversal would be required, yet since such a finding was not demanded, the judgment of the trial court must be affirmed.

4. The remaining enumerations of error, including one which complains of the judgment of the trial court dismissing the complaint as to the revenue commissioner and state auditor, relate to matters which would not, if error, aid the appellants if a reversal was obtained.

Judgment affirmed. All the Justices concur, except Gunter, J., who concurs in the judgment only.

Submitted January 9, 1973—Decided February 22, 1973—Rehearing Denied March 15, 1973.

Injunction. Macon Superior Court. Before Judge Marshall.

Carl P. Savage, Jr., J. Leonard Liggin, for appellants.

W. T. Roberts, H. Perry Michael, Assistant Attorney General, Gary B. Andrews, for appellees.

APPENDIX B

Clerk's Office, Supreme Court of Georgia

Dear Sir: Atlanta 3/15/73

The motion for a rehearing was denied today:

Case No. 27682 Cox v. Blackmon Comr.

Yours very truly

Mrs. Joline B. Williams, Clerk

APPENDIX C

Supreme Court of Georgia

Atlanta, March 19, 1973

The Honorable Supreme Court met pursuant to adjournment.

By Chief Justice Mobley:

The following direction was given:

I. P. Cox et al. v. John A. Blackmon, Comr., et al.

Upon consideration of the motion for a stay of this court's remittitur in order that an appeal or an application for certiorari may be filed in the Supreme Court of the United States to obtain a review of this court's judgment rendered in this case on March 15, 1973, such motion is hereby granted, subject to the following conditions:

The clerk of this court is directed to withhold the transmittal of such remittitur to the trial court for ninety days from the date of this court's judgment, and until the final disposition of the said case by that court; Provided, that promptly upon the filing of such appeal or application in the Supreme Court of the United States, the clerk of this court shall be notified thereof in writing and also shall be notified of any judgment of that court denying such application or appeal and of any motion for rehearing, or, if no application or appeal be filed in that court within the said ninety day period or within an authorized extension thereof, the clerk of this court shall be promptly so notified in writing.

Carlton Mobley
Chief Justice

Supreme Court of the State of Georgia
Clerk's Office, Atlanta

March 19, 1973

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk

APPENDIX D

State Courts; Appeal; Certiorari

USCA Sec. 1257

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: . . .

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, The United States."

USCA Sec. 2101

Supreme Court; Time for Appeal or Certiorari; Docketing; Stay . . .

"(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

APPENDIX E

27719. Griggs et al. v. Greene et al.

27741. Blackmon v. Brasington et al.

1. Under the decision of this court in **Dobson v. Brown**, 225 Ga. 73, 76 (166 SE2d 22), it was not a condition precedent to the plaintiffs' right to sue that any taxes admitted to be due be first tendered to the tax commissioners of the respective counties.

2. Under Article VII, Section I, Paragraph III of the Constitution of 1945, all tangible property, both real and personal, constitutes a single class for the purposes of taxation, and the method of assessment thereof must be uniform throughout the taxing unit. The General Assembly has no authority to establish separate classes of tangible property for the purposes of taxation nor to authorize the revenue commissioner to establish such separate or sub-classes of tangible property.

3. Properly construed Ga. L. 1966, p. 45, Ga. L. 1970, p. 91, Ga. L. 1970, p. 642, and Ga. L. 1972, p. 174, codified as §§ 92-7001 through 92-7002.1 of Code Ann. do not either expressly or impliedly require or authorize the sub-classification of tangible property for tax purposes and the orders of the State Revenue Commissioner which directed percentage adjustments in varying percentages as to certain parts of their respective tax digests with respect to tangible property but not with respect to all the tangible property on said digests amounted to sub-classification of such tangible property for tax purposes contrary to law and contrary to the Constitution of this State. Said orders were, therefore, illegal, and the trial court in each case properly enjoined their enforcement.

4. The Acts referred to in the foregoing headnote are not violative of the due process and equal protection provisions of the State and Federal Constitutions by reason of their failure to provide either singly or collectively for notice and an opportunity to be heard to individual taxpayers in counties where adjustments of individual assessments are effected by reason of an order of the revenue commissioner directing a percentage adjustment in the digest of the county as to the whole class of tangible property.

Argued January 12, 1973—Decided February 22, 1973—Rehearing Denied March 15, 1973

Case No. 27719. Injunction. Fayette Superior Court. Before Judge Whalen.

Charles T. Ballard, for appellants.

Moffett & Henderson, John Walton Henderson, for appellees.

Case No. 27741. Injunction. Brooks Superior Court. Before Judge Calhoun.

Arthur K. Bolton, Attorney General, Harold N. Hill, Jr., Executive Assistant Attorney General, Richard L. Chambers, H. Perry Michael, Assistant Attorneys General, Gary B. Andrews, for Appellant.

Alexander, Vann & Lilly, Roy M. Lilly, Thomas K. Vann, James Lovett, for appellees.

Sanders, Mottola, Haugen, Wood & Goodson, Charles Van S. Mottola, Heyman & Sizemore, Terry P. McKenna, William H. Major, George H. Marshall, Jr., amicus curiae.

Hawes, Justice. The appeal in each of these cases is from the order and judgment of the respective superior courts enjoining the defendants from putting into effect in their respective counties orders of the State Revenue Commissioner adjusting by varying percentages the valu-

ations reported by the defendant tax commissioners and assessors on their respective digests as to certain real and personal properties referred to therein. While there are differences in the two cases, the substantial question presented by each is the same, and we have accordingly elected to dispose of them together, though they emanate from widely separated counties of the state.

The **Griggs** case was commenced when a large number of individual taxpayers, suing on behalf of themselves individually and on behalf of all others similarly situated, filed a complaint naming as defendants the tax assessors and the tax commissioner of Fayette County seeking an injunction against the defendants putting into effect the revenue commissioner's order which required that the defendants adjust the tax digest of Fayette County by raising the assessment on real property located outside cities by 89 percent, by raising the assessment on real property located inside cities by 28 percent and by raising the assessment on personal property except bank shares and motor vehicles by 34 percent "to achieve a digest of 40 percent of fair market value as required by Georgia law." The case represented by the appeal of Blackmon was commenced when Brasington and four other individuals filed a complaint in the Superior Court of Brooks County against five named individuals as members of the Board of Tax Assessors of Brooks County, against five named individuals as members of the Board of Commissioners of Brooks County, against C. E. Dodd as Tax Commissioner of Brooks County, and against John A. Blackmon as Revenue Commissioner of the State of Georgia, seeking a declaratory judgment and injunctive relief against the defendants putting into effect an order of the revenue commissioner similar to the order involved in the **Griggs** case which required that the tax assessors adjust the tax digest of Brooks County by increasing the assessments on all individual parcels of real estate located out-

side cities by 37 percent, and on personal property except bank shares and motor vehicles by 13 percent "to achieve a digest of 40 percent of fair market value, as required by Georgia law."

In each of the cases, the facts, so far as relevant to the issues, are substantially the same and are not in dispute. In each case the parties plaintiff and other taxpayers timely filed tax returns declaring their tangible property, both real and personal, subject to taxation at values which the taxpayers deemed to be the fair market value of the same, and in each instance, the tax assessors, after either accepting the valuation returned by the individual taxpayer or adjusting the same and notifying the taxpayer, and after any adjustments in such valuations resulting from arbitration assessed each parcel of real property and all tangible personal property at 40 percent of the fair market value which had been so fixed by that procedure, as required by law. Code § 92-5703, as amended by Ga. L. 1968, pp. 358, 359. Thereafter, the tax receiver of each county prepared the county tax digest and forwarded the same to the State Revenue Commissioner for approval. Upon examination of the respective digests, the State Revenue Commissioner issued the orders respecting each county digest as above referred to and the same were returned to the respective tax commissioners who thereupon, together with the tax assessors of the respective counties, applied percentage adjustments to individual valuations and assessments of the taxpayers owning property of the category covered by the commissioner's order, and without prior notice of such percentage adjustments to any individual taxpayer, mailed tax bills reflecting the increased assessments.

In the **Griggs** case, as was said by the trial court in the order appealed from, the "gist of the action insofar as constitutional grounds are concerned is the lack of due process resulting from failure to give notice. This point is

sufficiently raised and the decision therein cannot be voided by passing a decision herein on any collateral matter." In neither that case nor in the **Blackmon** case did the complainants levy a direct attack on the constitutionality of the laws with which we hereinafter deal. The only relief sought in the **Griggs** case was an injunction prohibiting the defendants from arbitrarily raising assessments pursuant to the order of the revenue commissioner on the ground that the failure to afford the plaintiffs notice and an opportunity to be heard after the issuance of the revenue commissioner's order denied them the equal protection of the law and due process in violation of those constitutional guarantees. The trial court there found in accordance with that contention and merely enjoined the tax assessors from proceeding with any assessment contained in the 1972 Fayette County tax digest insofar as the same had been corrected, changed or equalized by the tax assessors pursuant to the revenue commissioner's order. In the **Blackmon** case, the attack was on the lawfulness of the procedure followed by the revenue commissioner on the ground that the failure to afford the plaintiffs notice and an opportunity to be heard denied them equal protection of the laws and due process. In that case, however, the trial court in its interlocutory decree expressly held Ga. L. 1966, p. 45, as amended by Ga. L. 1970, p. 91, and Ga. L. 1970, p. 642, as amended by Ga. L. 1972, p. 174 to be unconstitutional in that by reason of their failure to provide for notice and an opportunity to be heard after the revenue commissioner has ordered adjustments in the tax digest pursuant thereto they deny equal protection and due process of law.

In the view which we take of these cases, it is necessary to enunciate one other constitutional principle in order that the ruling which we make may be clearly understood. We, therefore, restate the real issues involved in these cases, as follows: First, does the Constitution permit the

sub-classification of tangible property for the purpose of applying different assessment rates and procedures to one or more sub-classes of tangible property, and, if so, has the legislature in enacting the provisions of Code § 92-7001 as amended by the various Acts amendatory thereof in fact created sub-classifications of tangible property; second, may the legislature consistent with constitutional due process provide for the adjustment of the tax digests of the various counties by order of the revenue commissioner which results in the adjustment of the assessments of individual taxpayers, without affording the individuals whose assessments are affected by such percentage adjustments notice and an opportunity to be heard thereon.

1. The contention is made that the plaintiffs had no standing to sue in these cases in the absence of showing that they had tendered to the tax commissioners of the respective counties involved the taxes which they admit would be due if their contentions were sustained. Appellants rely upon the principle enunciated by this court in **Walker v. Burns**, 220 Ga. 467 (139 SE2d 389), and followed thereafter by a number of cases such as **Hobbs v. Nichols**, 223 Ga. 639 (157 SE2d 294), and as explained by this court in **Register v. Langdale**, 226 Ga. 82(1) (172 SE2d 620). However, in neither of the cases presently before us did the plaintiffs ask that the counties be enjoined from collecting taxes from them. The relief which they sought and which the trial court granted was an injunction against the taxing authorities from proceeding under the alleged void and illegal tax digests. Any owner of property subject to taxation would have standing to seek the relief sought by the plaintiffs in these cases without tendering any taxes that he might owe. **Dobson v. Brown**, 225 Ga. 73, 76, supra. There is no merit in this contention of the appellants.

2. Article VII, Sec. I, Par. III of the Constitution of 1945 as amended in 1963 provides: "All taxes shall be levied

and collected under general laws and for public purposes only. All taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. Classes of subjects for taxation of property shall consist of tangible property and one or more classes of intangible personal property including money. The General Assembly shall have the power to classify property including money for taxation, and to adopt different rates and different methods for different classes of such property. Notwithstanding anything to the contrary contained in this paragraph, the General Assembly shall be authorized to enact legislation treating any and all motor vehicles, including trailers, as a separate class from other classes of tangible property for ad valorem property tax purposes, and to adopt different rates, methods or assessment dates for the taxation of such property, and to enact legislation consistent herewith to prevent any person, firm or corporation from escaping payment of their fair share of ad valorem taxes on said motor vehicles." Code Ann. § 2-5403. It is now too well established to admit of any argument to the contrary that this constitutional provision establishes as a single **class** of property all real property and all tangible personal property (except motor vehicles including trailers which may be established by the General Assembly as a separate class from other classes of tangible property) for ad valorem property tax purposes. **Mayor &c. of Savannah v. Weed**, 84 Ga. 683 (11 SE 235, 8 LRA 270); **Hutchins v. Howard**, 211 Ga. 830(1) (89 SE2d 183); **Colvard v. Ridley**, 218 Ga. 490(1) (128 SE2d 732). Under the rulings made by this court in the foregoing cases, taxation of a single class of property within the taxing unit must be uniform. In this case, as in the **Hutchins** case, the territory to which the tax applies is co-extensive with the limits of the counties involved. Thus, we conclude that in Fayette County, Georgia, and in Brooks County, Georgia, and in all other counties of the state all tangible property, both real and personal, except automobiles and trail-

ers, constitutes a single class of property for the purposes of taxation, and must be assessed and taxed alike, and that the General Assembly has no authority to establish different classes or sub-classes of tangible property other than as fixed by the constitutional provision quoted.

3. Do the various Acts of the legislature providing for the assessment of tangible property, and the equalization of assessments purport to create sub-classes of tangible property or to authorize the revenue commissioner, by administrative order or otherwise, to create different classes of tangible property for this purpose? "All presumptions being in favor of the constitutionality of an Act of the General Assembly, 'it cannot be lawfully set aside by the courts unless the alleged conflict with the Constitution is plain and palpable.' **Mayes v. Daniel,** 186 Ga. 345 (198 SE 535)." **Culbreth v. Southwest Ga. Housing Authority,** 199 Ga. 183, 189 (33 SE2d 684). "It is a well-settled rule that if a statute is equally susceptible of two constructions, one of which will harmonize it with the Constitution and the other of which will render it unconstitutional, the former construction is generally to be preferred. **Fordham v. Sikes,** 141 Ga. 469 (a) (89 SE 208)." **Thomas v. Bd. of Commrs. of Chattooga County,** 196 Ga. 10, 14 (25 SE2d 647). Applying these rules, while it is true that the various Acts of the legislature respecting the assessment of property for taxation and the equalization of assessments refer to "adjustments in the valuation of any class or classes of property" and use other like expressions, we think it is plain that such references are to classes of property as established by the Constitution. We have carefully examined virtually all of the Acts of the legislature relating to this subject passed in the last few years, and especially Ga. L. 1966, p. 45; 1970, p. 91; 1970, p. 642; and, 1972, p. 174 referred to in the orders of the trial courts which are appealed from, and we find no language in any of those Acts which expressly establishes separate classes of tangible property for the

purposes of taxation, and no language which can be said to reasonably authorize the construction that such was the legislative intent. As now extant, these Acts are codified as Code Ann. §§ 92-7001 through 92-7002.1.

It appears from the records in these cases that the revenue commissioner has adopted the practice and procedure for the purpose of reporting county digests of subdividing the single class of tangible property into a number of sub-categories or classes; for example, real estate is divided into two categories, that lying outside of cities and that lying inside cities, and tangible personal property is divided into at least five sub-classes, to wit: merchandise, inventory, fixtures and mill supplies; motor boats, airplanes and house trailers; machinery equipment for manufacturing and mining; livestock, farm implements, tractors and fertilizers; and other personal property. That for the purposes of statistical accounting or other non-taxing ends, the revenue commissioner may sub-classify property is not questioned in these cases, and it is unnecessary for us to pass upon the legality of this practice except to observe that no sound reason appears why such sub-classification may not be made for those limited purposes. However, as we have observed above, the Constitution establishes all tangible property (except automobiles and trailers), both real and personal, as a single class for the purpose of taxation, and it commands that all property in that class must be treated uniformly. In the orders of the revenue commissioner directed to the tax receivers of the counties here involved, the sub-classifications above enumerated were utilized for purposes of making adjustments in the tax digest as to some of these sub-classes with different adjustments as to other sub-classes, and no adjustments at all as to still other sub-classes. The orders of the revenue commissioner in question, if complied with, would thus bring about a violation of the constitutional requirement of uniformity as to the class of tangible property within the taxing unit. It

was, therefore, proper for the trial court in each case to enjoin the enforcement of the respective orders and to enjoin the respective tax assessors from putting such orders into effect. However, the statutes under which the revenue commissioner purported to act do not, as we have already observed, either specifically or impliedly authorize such sub-classification, and they do not, therefore, in this respect violate the Constitution.

4. It remains, therefore, for us to determine whether by reason of the conceded failure of the various Acts embodied in Code Ann. § 92-7001 relating to the equalization of county tax digests as between the counties and as between the various classes of property within a county to provide for notice and an opportunity for a hearing to individual taxpayers when adjustments are made in individual assessments pursuant to orders of the revenue commissioner issued under authority thereof, said Acts are violative of the due process and equal protection provisions of the State and Federal Constitutions.

In answering this question, it would be profitable to look broadly at the scheme of property taxation and equalization as embodied in the Georgia law. "Taxation on all real and tangible personal property subject to be taxed is required to be ad valorem—that is, according to value, and the requirement in the Constitution that the rule of taxation shall be uniform, means that all kinds of property of the same class not absolutely exempt must be taxed alike, by the same standard of valuation, equally with other taxable property of the same class, and co-extensively with the territory to which it applies, meaning the territory from which the given tax, as a whole is to be drawn." **Hutchins v. Howard**, 211 Ga. 830 (2), supra; Ga. L. 1937-38, Ex. Sess., pp. 156, 158 (Code Ann. § 92-114); **Colvard v. Ridley**, 218 Ga. 490, supra. As was further said by Justice Candler speaking for this court in the **Hutchins** case, "The

law requires that all real and tangible personal property be assessed at its fair market value. Code §§ 92-5701, 92-5702. It establishes a scheme of administrative machinery to bring this about. § 92-6901 et seq. . . . And we might well say, as did the Supreme Court of the United States in Green v. L. & I. R. Co., 244 U.S. 499, 501 (37 SC 673, 61 LE 1280, AC 1917E 88), that 'the duty to assess at full value is not supreme but yields to the duty to avoid discrimination.' "

Two chapters of Title 92 of the 1933 Code are devoted to the equalization of assessments. Chapter 92-69 relates to the equalization of assessments within the county as between individual taxpayers. Chapter 92-70 relates to the equalization of tax digests as between the counties. The purpose of each is to achieve as near as may be uniformity and equality of assessment as between individual taxpayers within a county and uniformity and equality as between digests of the various counties of the state. While both of these chapters as originally written have been extensively amended in recent years the overall scheme remains the same. The first step in achieving uniformity and equality as between individual taxpayers within the various counties is the requirement that each individual taxpayer return his property at its fair market value. Within each county a board of tax assessors is established to review the returns of the individual taxpayers so as to ascertain that all property not absolutely exempt is returned at its fair market value. Whenever the tax assessors in the performance of their duties ascertain that a particular taxpayer has failed to return his property at its fair market value they are required by law to adjust the return by assessing the property returned at what they determine to be its fair market value, which may be more or less than the value placed upon the property by the taxpayer. When the tax assessors make an adjustment with respect to the return of any individual taxpayer, they are required by

law to give him notice thereof and to afford him an opportunity to contest their valuation. With respect to the assessments involved in these cases, the method for contesting valuations placed on property by the tax assessors was arbitration. Where the difference between the valuation of the board of tax assessors and valuation of the arbitrators exceeded the sum of $1,000, the taxpayer or the board of tax assessors could appeal the decision of the arbitrators to the superior court. Code § 92-6912, as amended by Ga. L. 1969, p. 942. **Hancock v. Bd. of Tax Assessors of Harris County**, 226 Ga. 570 (176 SE2d 102). This procedure satisfied the requirements of due process and equal protection insofar as these require notice and an opportunity to be heard. When this procedure has been completed as to all taxpayers within a particular county desiring to avail themselves of arbitration and appeal, and when the digest has been compiled reflecting all assessed property, however assessed, a presumption of laws arises that as between individual taxpayers within the county the valuation of all property for assessment purposes has been equalized and made uniform.

Thereafter, under the provisions of Code § 92-6917, the county boards of tax assessors transmit one copy of the completed tax digest to the State Revenue Commissioner for examination and approval. Under the provisions of Chapter 92-70, it is the duty of the revenue commissioner to carefully examine the digest, to compare the digests of the various counties for the purpose of ascertaining whether the valuation of the various classes of property as made in the respective counties is reasonably uniform as between the counties and as between the various classes within the county. It is clear that the duty of the revenue commissioner to examine the digest of a particular county extends no further than an examination of the digest as to particular classes of property as entities and that he is authorized to make percentage adjustments in the digests

as to any particular class or classes of property with respect to the whole digest of that class and not with respect to segments of the class. Under the law, when the revenue commissioner orders percentage adjustments in the assessments as to any class or classes of property, it is his further duty to make adjustments in the millage rate of the county "so as to ensure that the adjusted county digest will produce an amount of revenue reasonably equivalent to that amount of revenue which would have been produced had no adjustments been made to the county valuations." Code Ann. § 92-7001 (c). The presumption is that adjustments thus made in the total digest do not disturb the previously established uniformity and equality as between individual taxpayers since all who pay taxes on the class or classes of property to which the adjustments are applied remain in substantially the same relation to each other after the adjustments as they were before the adjustments were made.

The scheme of equalization which we have outlined above was substantially recognized by this court in the case of **Ogletree v. Woodward,** 150 Ga. 691 et seq. (105 SE 243), wherein the issue as to the right of individual taxpayers to notice of adjustments made pursuant to the order of the revenue commissioner (then the tax commissioner) and the right to contest such adjustments was expressly raised and decided adversely to the contentions of the taxpayers there. In disposing of that contention, this court said: "It is insisted that the Act in question is violative of the due-process clauses of the State and Federal Constitutions, because the Act does not provide for notice to the individual taxpayer and an opportunity to be heard, either before or after the State tax-commissioner orders a general increase in the valuation of the various classes of property in the county, or before such order is complied with by the board of county tax-assessors. Section 14 of the Act provides that notice of an increase of assessment by the State tax-

commissioner shall be given to the board of county tax-assessors, and the board may, as of right, demand an arbitration in behalf of the county, in the event the board desires it. This is due process of law, so far as guaranteed by the Fourteenth Amendment to the Constitution of the United States. In Bi-Metallic Investment Co. v. State Board, 239 U.S. 441, 444 (36 SC 141, 60 LE 372), Mr. Justice Holmes, speaking for the court, said: 'For the purposes of decision we assume that the constitutional question is presented in the baldest way—that neither the plaintiff nor the assessor of Denver, who presents a brief on the plaintiff's side, nor any representative of the city and county, was given an opportunity to be heard, other than such as they may have had by reason of the fact that the time of meeting of the boards is fixed by law. On this assumption it is obvious that injustice may be suffered if some property in the county already has been valued at its full worth. But if certain property has been valued at a rate different from that generally prevailing in the county, the owner has had his opportunity to protest and appeal as usual in our system of taxation (Hagar v. Reclamation District, 111 U.S. 701, 709, 710, 4 SC 663, 28 LE 569); so that it must be assumed that the property owners in the county all stand alike. The question then is whether all individuals have a constitutional right to be heard before a matter can be decided in which all are equally concerned —here, for instance, before a superior board decides that the local taxing officers have adopted a system of undervaluation throughout a county, as notoriously often has been the case. The answer of this court in the State Railroad Tax Cases, 92 U.S. 575 (23 LE 663), at least as to any further notice, was that it was hard to believe that the proposition was seriously made. Where a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General stat-

utes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule. If the result in this case had been reached, as it might have been, by the state's doubling the rate of taxation, no one would suggest that the Fourteenth Amendment was violated unless every person affected had been allowed an opportunity to raise his voice against it before the body entrusted by the State Constitution with the power. In considering this case in this court we must assume that the proper state machinery has been used; and the question is whether, if the State Constitution had declared that Denver had been undervalued as compared with the rest of the state and had decreed that for the current year the valuation should be forty percent higher, the objection now urged could prevail. It appears to us that to put the question is to answer it. There must be a limit to individual argument in such matters, if government is to go on.'

"Is the act violative of the due-process clause of the Constitution of the State? The act guarantees to every individual taxpayer in the county notice and an opportunity to be heard before the assessment made by the board of county tax-assessors shall become final. Before an increase in the valuation of the various classes of property in the county, by order of the state tax-commissioner becomes final, the board of county tax-assessors is, of right, given notice and an opportunity to be heard. This provision of the act manifestly deals with the county as a unit; and while the decision of the Supreme Court of the United States is not controlling, the line of reasoning adopted by that court upon the question here involved is applicable. We accordingly follow it, and hold that the Act in question is not violative of the due-process clause of the Con-

stitution of this State." **Ogletree v. Woodward**, 150 Ga. 691, 695, supra.

The appellees in these cases contend that the **Ogletree** case is distinguishable from this case, but they ask the court to overrule that case if we do not find in accordance with that contention. To the extent that the adjustments complained of in that case were uniform percentage adjustments as to the whole class of property to which they applied included on the digest of the county involved whereas in this case the percentage adjustments were as to only a part of the class of tangible property, that case is distinguishable. However, with respect to the ruling of the Judge of the Superior Court of Brooks County in the **Blackmon** case declaring Ga. L. 1966, p. 45, Ga. L. 1970, p. 91, Ga. L. 1970, p. 642, and Ga. L. 1972, p. 174 to be unconstitutional as denying due process and equal protection of the laws there is no distinction between the issues in the two cases. The ruling in the **Ogletree** case is controlling as to that issue. We are convinced that that ruling is correct and that it ought not to be overruled. We, therefore, decline to overrule it but will follow it. We, therefore, hold that the Acts under which the revenue commissioner issued the orders complained of here are not unconstitutional for any reason urged. The orders complained of, however, are void and illegal because they do not follow the mandate of the Acts nor of the constitutional provisions under which they purportedly were issued and insofar as the judgments enjoined the enforcement of the orders of the revenue commissioner they are proper.

Judgment in Case No. 27719 affirmed. Judgment in Case No. 27741 affirmed in part; reversed in part. All the Justices concur, except Gunter, J., who dissents.

Gunter, Justice, dissenting. I am in disagreement with Division 3 of the majority opinion and that part of Divi-

sion 4 of the majority opinion as follows: "The orders complained of, however, are void and illegal because they do not follow the mandate of the Acts nor the constitutional provisions under which they were purportedly issued . . ."

I think the majority opinion misses the mark entirely when it interprets the words "classes of property" as used in the equalization statute (Code Ann. § 92-7001 (c)) to mean "constitutional classes of property."

It is clear to me that these words in the equalization statute should not be so narrowly interpreted, and because they are so narrowly interpreted, I think the majority decision is based on a false premise.

The 1972 equalization statute provides that the State Revenue Commissioner may return the digest to the local board of tax assessors to make adjustments in the valuation of any class or classes of property **in the tax digest** of any county as may be prescribed by the Commissioner to achieve the purpose and intent of the Act.

This statute does not refer to class or classes of property "as defined in the Constitution," but it refers to class or classes of property "in the tax digest."

There are many classes of property "in the tax digest," because the State Revenue Commissioner is given authority by law to prescribe the format of the tax digest used in every county. Code Ch. 92-63. And Code § 92-6305 provides: "Land and interest in land, together with the returns of personal estate and other interests the subject of taxation, shall be returned and set down in the digest in separate columns according to the classification furnished the receivers by the State Revenue Commissioner in each year, and their aggregate value extended." That statute providing for the classification of property in separate columns as directed by the State Revenue Commissioner

had been with us for one hundred twenty (120) years when the General Assembly enacted the 1972 equalization statute. The 1972 statute referred to "any class or classes of property in the tax digest."

In 1972, I think the General Assembly knew that there were many classes of property contained in the tax digest of each county, far more than are contained in the constitutional definition. It is inconceivable to me that the majority can interpret the words "any class or classes of property in the tax digest" to mean "any class or classes of property as defined in the Constitution."

The majority's interpretation, to my mind, frustrates the statutory intention of allowing the State Revenue Commissioner to equalize assessments of all types of property as classified in the various columns of the tax digest within the geographical boundaries of a county and among the one hundred fifty-nine (159) counties within the geographical boundaries of the State.

The orders of the Revenue Commissioner in these two cases were not, in my opinion, in violation of the equalization statute or the Constitution of Georgia. These orders properly sought to accomplish what the equalization statute had mandated.

I respectfully dissent.

APPENDIX F

(As Codified)

Chapter 92-70. Duties, Etc., of State Revenue Commissioner and State Auditor

Sec.

92-7001 State Revenue Commissioner to examine county tax digests and ascertain whether property valuation is uniform between counties; adjustment of values

92-7002 County tax assessors to correct tax digests to conform to findings of commissioner

92-7002.1 Tax rate to be submitted to commissioner by counties

92-7003 Changes or corrections by county board of assessors

92-7004 Arbitration in case of county board's dissatisfaction

92-7005 Oath of arbitrator

92-7006 Compensation of arbitrators

92-7007 Annual visit to each county by commissioner: expenses

92-7008 Equalized adjusted school property tax digest: duties of State Auditor

92-7009 Same; establishment of average ratio by use of personnel of Department of Audits

92-7010 Same; period of time for use of average ratio; determination of new ratios

92-7011 Same; information to be furnished State Board of Education

92-7012 Same; arbitration of disputes

92-7013 Same; Board of Equalization; creation; membership; duties, chairman; meetings

92-7014 Same; digests for years 1968 and 1969

Editorial Note

Acts 1966, pp. 45, 47, provides that original Code Chapter 92-70 of the Code of 1933, relating to the duty of the State Revenue Commissioner to examine the tax digests of the various counties filed in his office, as amended, is repealed in its entirety.

Sections of that Chapter not already repealed before the 1966 Act were:

92-7001, based upon Acts 1913, pp. 123, 129.

92-7002, based upon Acts 1913, pp. 123, 130; 1931, pp. 7, 35.

92-7003, based upon Acts 1913, pp. 123, 131; 1931, pp. 7, 35.

92-7007, based upon Acts 1913, pp. 123, 133; 1931, pp. 7, 35.

Sections of this Chapter which presently appear were not portions of this Chapter under the Code of 1933, but were added by subsequent laws not affected by the 1966 repealer.

92-7001 State Revenue Commissioner to examine county tax digests and ascertain whether property valuation is uniform between counties; adjustment of values

Beginning with the tax digests which are prepared for the calendar year 1967:

a. It shall be the duty of the State Revenue Commissioner to carefully examine the tax digests of the several counties filed in his office pursuant to the provisions of section 92-6917, and to compare said digests for the purpose of ascertaining whether the valuation of the various classes of prop-

erty as made in the respective counties for taxation purposes is reasonably uniform as between the various counties and as between the various classes within a county, and to ascertain compliance with Article VII, Section I, Paragraph III of the Constitution [of 1945, § 2-5403].

b. It is the purpose and intent of this Chapter to bring about as far as practicable an equalization throughout the State of the values of the various classes of property subject to taxation in accordance with Article VII, Section I, Paragraph III of the Constitution [of 1945, § 2-5403].

c. If it shall appear to the State Revenue Commissioner that in any one or more of the counties the taxable values fixed upon any one or more classes of property are not reasonably uniform with the values fixed upon the same classes of property in other counties, or if it shall appear that within a county the taxable values of one or more of the classes of property have been fixed so that the per centum of taxable value does not conform to such values of other classes of property within the county, the commissioner shall investigate and inquire as to the reason therefor, and after making such investigation and comparison shall have authority to adjust and equalize the same, either by adding a fixed per centum to the county valuation of any class of property in any county, if he finds the county valuation too low, or by deducting a fixed per centum from the county valuation if he finds the county valuation too high, as may appear to be just and right between the counties and within a county. The State Revenue Commissioner may, if he deems appropriate, return the digest to the local board of tax assessors to make adjustments in the valuation of any class or classes of property in the tax digest of any county as may be prescribed by the commissioner to achieve the purpose and intent of this Chapter. When such adjustments to the county valuations are made, the State Revenue Commissioner shall adjust the county millage levy, if necessary, so as to ensure that the adjusted county digest

will produce an amount of revenue reasonably equivalent to that amount of revenue which would have been produced had no adjustments been made to the county valuations: Provided, however, that in no case may the commissioner reduce the millage levy below the rate required by the county to meet its fixed obligations. After making the adjustments authorized herein, the State Revenue Commissioner shall, by United States mail, notify the county board of tax assessors and the governing authority of the county affected of said adjustments necessary, and the commissioner shall thereupon return the tax digest to the county for correction accordingly.

d. It shall be the further duty of the State Revenue Commissioner to examine the itemization of exempt properties appearing on the digest and, if in the judgment of the commissioner, any properties appearing thereon should be subject to taxation, to so advise the Board of Tax Assessors of the counties concerned with an explanation of his reasons for believing such property should be subject to taxation.

(Acts 1966, pp. 45, 46; 1970, pp. 91, 92; 1970, p. 642; 1972, p. 174.)

Editorial Note

This section is based upon Acts 1966, p. 45, which repealed former Chapter 92-70 of the Code of 1933. For history of this section prior to such repeal, see the Editorial Note at the beginning of this Chapter.

Acts 1970, pp. 91, 92, added to subsections a and c matter relating to the comparison of the valuation of the various classes of property within a county.

Acts 1970, p. 642, added subsection d.

Acts 1972, p. 174, rewrote subsection c.

92-7002 County tax assessors and governing authority of county to effect adjustments to county digest and county millage levy

Upon receipt of the notice from the State Revenue Commissioner required by section 92-7001, the county board of tax assessors and the governing authority of the county shall take such action as required to effect the adjustments made by the commissioner to the county digest and county millage levy.

(Acts 1966, pp. 45, 47; 1972, pp. 174, 175.)

Editorial Note

This section is based upon Acts 1966, p. 45, which repealed former Chapter 92-70 of the Code of 1933. For history of this section prior to such repeal, see the Editorial Note at the beginning of this Chapter.

Acts 1972, pp. 174, 175, entirely superseded the former section.

92-7002.1 Tax rate to be submitted to commissioner by counties

Notwithstanding any provision of law to the contrary, the governing authority of each county shall submit to the State Revenue Commissioner, at the time the county tax digest for the current year is submitted for his approval, the total county millage levy established for the county for the current year pursuant to Georgia law, and the State Revenue Commissioner shall not consider any county tax digest unless the said tax rate as required herein is submitted.

(Acts 1972, pp. 174, 176.)

(1966 Statute)

State Revenue Commissioner—Equalization of Taxable Values Between Counties

Code Chapter 92-70 Repealed

No. 31 (House Bill No. 468)

An Act to provide that the State Revenue Commissioner shall examine the tax digests of the several counties to compare said digest for the purpose of ascertaining whether the valuation of the various classes of property for taxation purposes as made in the respective counties is reasonably uniform as between the counties; to provide for the equalization of the taxable values of property between the counties by the State Revenue Commissioner; to provide for the return of tax digests found to be unreasonably out of proportion; to provide for the correction of tax digests so returned; to repeal Code Chapter 92-70, relating to the duty of the State Revenue Commissioner to examine tax digests of the several counties; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. Beginning with the tax digests which are prepared for the calendar year 1967:

Duties

a. It shall be the duty of the State Revenue Commissioner to carefully examine the tax digests of the several counties filed in his office pursuant to the provisions of Code section 92-6917, and to compare said digests for the purpose of ascertaining whether the valuation of the various classes of property as made in the respective counties for

taxation purposes is reasonably uniform as between the various counties and to ascertain compliance with Article VII, Section I, Paragraph III of the Constitution.

Intent

b. It is the purpose and intent of this Act to bring about as far as practicable an equalization throughout the state of the values of the various classes of property subject to taxation in accordance with Article VII, Section I, Paragraph III of the Constitution.

Adjustment of values

c. If it shall appear to the State Revenue Commissioner that in any one or more of the counties the taxable values fixed upon any one or more classes of property are not reasonably uniform with the values fixed upon the same classes of property in other counties, the Commissioner shall investigate and inquire as to the reason therefor, and after making such investigation and comparison, shall have authority to adjust and equalize the same, either by adding a fixed per centum to the county valuation of any class of property in any county, if he finds the county valuation too low, or by deducting a fixed per centum from the county valuation if he finds the county valuation too high, as may appear to be just and right between the counties. After making such adjustments, the State Revenue Commissioner shall notify by United States mail the chairman of the county board of tax assessors of the county affected that the county valuations upon the classes of property specified in said notice shall be raised or lowered by the per centum fixed by the State Revenue Commissioner, and the State Revenue Commissioner shall thereupon return to said county its tax digest for correction accordingly.

Duties of county tax assessors

Section 2. Upon the giving of notice by the State Revenue Commissioner of changes or corrections to be made in

the county tax digest, it shall be the duty of the chairman of the county board of tax assessors of the county affected, to call immediately a meeting of said county board, and at said meeting the board shall correct the county valuation upon the class or classes of property specified by the State Revenue Commissioner, so as to make the same conform to the findings of the Commissioner by applying uniformly to the specified class or classes of property the fixed per centum of increase or of decrease specified by the State Revenue Commissioner and by raising or lowering all the individual returns of all the taxpayers of the county upon the specified class or classes of property accordingly.

Code Chap. 92-70 repealed

Section 3. Code Chapter 92-70, relating to the duty of the State Revenue Commissioner to examine the tax digests of the various counties filed in his office, as amended, is hereby repealed in its entirety.

Section 4. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved February 18, 1966.

(One of 1970 Statutes)

State Revenue Commissioner—Examination of Tax Digests

No. 781 (Senate Bill No. 478).

An Act to amend an Act requiring the State Revenue Commissioner to examine the tax digests of the several counties for the purpose of ascertaining whether the valuation of the various classes of property in the respective counties is uniform, approved February 18, 1966 (Ga. L. 1966, p. 45), so as to require the State Revenue Commissioner to compare the valuation of the

various classes of property within a county and to reject the digests of those counties in which he finds the taxable values of such classes to be not uniform; to authorize the State Revenue Commissioner to instruct the board of tax assessors to take certain action with regard to that tax digest when the above circumstances are found; to provide an effective date; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. An act requiring the State Revenue Commissioner to examine the tax digests of the several counties for the purpose of ascertaining whether the valuation of the various classes of property in the respective counties is uniform, approved February 18, 1966 (Ga. L. 1966, p. 45), is hereby amended by adding between the words "counties" and "and" as they appear in subsection a. of section 1 the following:

"and as between the various classes within a county,",

so that when so amended subsection a. shall read as follows:

"a. It shall be the duty of the State Revenue Commissioner to carefully examine the tax digests of the several counties filed in his office pursuant to the provisions of Code section 92-6917, and to compare said digests for the purpose of ascertaining whether the valuation of the various classes of property as made in the respective counties for taxation purposes is reasonably uniform as between the various counties and as between the various classes within a county, and to ascertain compliance with Article VII, Section I, Paragraph III of the Constitution."

Section 2. Said Act is further amended by adding at the end of the first phrase of subsection c. the following:

"or if it shall appear that within a county the taxable values of one or more of the classes of property have been fixed so that the percentum of taxable value does not conform to such values of other classes of property within the county,",

and by adding at the end of the first sentence thereof the following:

"and within a county.",

so that when so amended subsection c. shall read as follows:

"c. If it shall appear to the State Revenue Commissioner that in any one or more of the counties the taxable values fixed upon any one or more classes of property are not reasonably uniform with the values fixed upon the same classes of property in other counties, or if it shall appear that within a county the taxable values of one or more of the classes of property have been fixed so that the percentum of taxable value does not conform to such values of other classes of property within the county, the Commissioner shall investigate and inquire as to the reason therefor, and after making such investigation and comparison, shall have authority to adjust and equalize the same, either by adding a fixed percentum to the county valuation of any class of property in any county, if he finds the county valuation too low, or by deducting a fixed percentum from the county valuation if he finds the county valuation too high, as may appear to be just and right between the counties and within a county. After making such adjustments, the State Revenue Commissioner shall notify by United States mail the chairman of the county board of tax assessors of the county affected that the county valuations upon the classes of property specified in said notice shall be raised or lowered by the percentum fixed by the State Revenue Com-

missioner, and the State Revenue Commissioner shall thereupon return to said county its tax digest for correction accordingly."

Effective date

Section 3. This Act shall become effective upon its approval by the Governor or upon its becoming law without his approval.

Section 4. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved February 25, 1970.

(Another 1970 Statute)

State Revenue Commissioner—Duty to Examine Tax Digests

No. 1277 (Senate Bill No. 341)

An Act to amend an Act providing that the State Revenue Commissioner shall examine the tax digests of the several counties in order to determine that the valuation of the various classes of property are reasonably uniform between the counties, approved February 18, 1966 (Ga. L. 1966, p. 45), so as to provide that it shall be the duty of the State Revenue Commissioner to examine the itemization of exempt properties appearing on the tax digests of the various counties and, if in the judgment of the Commissioner, any properties listed thereon should be subject to taxation, to advise the board of tax assessors of his reasons for believing such property should be subject to taxation; to provide an effective date; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. An Act providing that the State Revenue Commissioner shall examine the tax digests of the several counties in order to determine that the valuation of the various classes of property are reasonably uniform between the counties, approved February 18, 1966 (Ga. L. 1966, p. 45), is hereby amended by adding at the end of section 1 a new subsection (d) to read as follows:

"(d) It shall be the further duty of the State Revenue Commissioner to examine the itemizations of exempt properties appearing on the digest and, if in the judgment of the Commissioner, any properties appearing thereon should be subject to taxation, to so advise the Board of Tax Assessors of the counties concerned with an explanation of his reasons for believing such property should be subject to taxation."

Effective date

Section 2. The provisions of this Act shall apply to all tax digests filed with the Commissioner for the year 1971 and all years thereafter.

Section 3. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved March 23, 1970.

(1972 Statute)

Revenue—State Revenue Commissioner Authorized to Return County Digests for Uniformity Changes, Etc.

No. 855 (Senate Bill No. 596)

An Act to amend an Act requiring the State Revenue Commissioner to examine the tax digests of the several counties for the purpose of ascertaining whether the valuation of the various classes of property in the respective counties is uniform, approved February 18,

1966 (Ga. L. 1966, p. 45), as amended, so as to authorize the State Revenue Commissioner to return the tax digests for correction without specifying a fixed percentum to be added or deducted; to require the State Revenue Commissioner to adjust the total county millage levy where adjustments are made in the county digests; to provide that the changes ordered by the State Revenue Commissioner be effected; to provide that the total county millage levy for the current year shall be certified to the State Revenue Commissioner at the same time the digest for the current year is submitted for approval; to provide for an effective date; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. An Act providing that the State Revenue Commissioner shall examine the tax digests of the several counties in order to determine that the valuation of the various classes of property are reasonably uniform between the counties, approved February 18, 1966 (Ga. L. 1966, p. 45), as amended, is hereby amended by striking subsection c of section 1 in its entirety and inserting in lieu thereof a new subsection c, which shall read as follows:

Determination of uniformity.

"c. If it shall appear to the State Revenue Commissioner that in any one or more of the counties the taxable values fixed upon any one or more classes of property are not reasonably uniform with the values fixed upon the same classes of property in other counties, or if it shall appear that within a county the taxable values of one or more of the classes of property have been fixed so that the per centum of taxable value does not conform to such values of other classes of property within the county, the Commissioner shall investigate and inquire as to the reason therefor, and after making such investigation and comparison

shall have authority to adjust and equalize the same, either by adding a fixed per centum to the county valuation of any class of property in any county, if he finds the county valuation too low, or by deducting a fixed per centum from the county valuation if he finds the county valuation too high, as may appear to be just and right between the counties and within a county. The State Revenue Commissioner may, if he deems appropriate, return the digest to the local board of tax assessors to make adjustments in the valuation of any class or classes of property in the tax digest of any county as may be prescribed by the Commissioner to achieve the purpose and intent of this Act. When such adjustments to the county valuations are made, the State Revenue Commissioner shall adjust the county millage levy, if necessary, so as to ensure that the adjusted county digest will produce an amount of revenue reasonably equivalent to that amount of revenue which would have been produced had no adjustments been made to the county valuations; Provided, however, that in no case may the Commissioner reduce the millage levy below the rate required by the county to meet its fixed obligations. After making the adjustments authorized herein, the State Revenue Commissioner shall, by United States mail, notify the county board of tax assessors and the governing authority of the county affected of said adjustments necessary, and the Commissioner shall thereupon return the tax digest to the county for correction accordingly."

Section 2. Said Act is also amended by striking section 2 in its entirety and inserting in lieu thereof a new section 2 which shall read as follows:

County action.

"Section 2. Upon receipt of the notice from the State Revenue Commissioner required by Section 1 of

this Act, the county board of tax assessors and the governing authority of the county shall take such action as required to effect the adjustments made by the Commissioner to the county digest and county millage levy."

Tax rate to be submitted.

Section 3. Notwithstanding any provision of law to the contrary, the governing authority of each county shall submit to the State Revenue Commissioner, at the time the county tax digest for the current year is submitted for his approval, the total county millage levy established for the county for the current year pursuant to Georgia law, and the State Revenue Commissioner shall not consider any county tax digest unless the said rate as required herein is submitted.

Effective date.

Section 4. This Act shall become effective upon its approval by the Governor or upon its becoming law without his approval.

Section 5. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved March 9, 1972.

APPENDIX G

92-7008 Equalized adjusted school property tax digest; duties of State Auditor

The State Auditor shall establish, no later than November 15, 1971, and each year thereafter, on a continuing basis, an equalized adjusted school property tax digest for each county in the State and for the State as a whole for the current calendar year, excluding therefrom all real and personal property exempted from taxation for school purposes. The Auditor is hereby authorized to establish a unit within the Department of Audits, consisting of such number of personnel as he deems necessary, in order to establish and maintain on a continuing basis said equalized adjusted school property tax digest. Said equalized adjusted school property tax digest shall be established and maintained as follows:

(a) Determine the locally assessed valuation of the county property tax assessment digest for the preceding calendar year, exclusive of real and personal property exempted from taxation for school purposes and exclusive of public utility property shown on the county public utility property tax digest.

(b) Divide the sum of the locally assessed valuation of the county property tax assessment digest by the ratio of assessed value to true value of such property established by the Auditor in accordance with provisions of subsection (f) of this section.

(c) Determine the sum of the assessed valuation of the county public utility property tax digest for the preceding calendar year and divide said sum by the equalization ratio for such year established by the State Revenue Commissioner for the purpose of assessing public utility properties throughout the State.

(d) Repealed.

(e) The total of the sums obtained through the calculations prescribed in subsections (b) and (c) of this section shall be known as the current equalized adjusted school property tax digest of the county, and the sum of the current equalized adjusted school property tax digest of all counties of the State combined shall be known as the current equalized adjusted school property tax digest for the State as a whole.

(f) Establish no later than October 30, 1971, and thereafter as provided herein, for each county in the State, the average ratio of assessed value to true value of county property subject to taxation for school purposes, excluding public utility property, by establishing the ratio of assessed value to sales price for a representative number of parcels of real property, title to which was transferred during a preceding period of time, to be determined by the Auditor, and the average ratio of assessed value to sales price for the county as a whole based upon a representative number of usable transactions studied: Provided, however, the representative number of parcels of real property used for such study shall not include any parcel, title to which was transferred pursuant to the exercise of the power of eminent domain: Provided further, that no single parcel included in such study shall have a sales price which exceeds 10 per cent of the total sales price of all parcels included in such study: and provided further, the Auditor shall supplement realty sales price data available in any county with actual appraisals of a representative number of parcels of farm property and industrial and commercial property located within the county, the title to which was not transferred within the period of time determined by the Auditor. The Auditor may make appraisals on other types of real property located within the county provided adequate reliable sales data cannot be obtained on such property. The Auditor shall use the same ratio for other personal property ex-

cluding motor vehicles and bank stock within the county as is finally determined for real property within the county.

(Acts 1970, pp. 542, 543; 1972, pp. 829-831.)

Editorial Note

Sections 92-7008 through 92-7013 were formerly based upon Acts 1964, pp. 706-709; 1966, pp. 449, 450. They were repealed by Acts 1970, p. 54, the basis for present §§ 92-7008 through 92-7014.

Acts 1972, pp. 829-831, substituted the words "current calendar year" for "preceding calendar year" in the first paragraph, deleting subsection (d), deleting a reference to subsection (d) from subsection (e), and rewriting subsection (f).

Georgia Laws, Acts 1972

Equalized Adjusted School Property Tax Digest Act Amended

No. 1285 (Senate Bill No. 648)

An Act to amend an Act requiring the State Auditor to establish an equalized adjusted school property tax digest for each county in the State and for the State as a whole, excluding therefrom real and personal property exempted from taxation for school purposes, approved March 20, 1970 (Ga. L. 1970, p. 542), so as to provide that the equalized adjusted school property tax digest be established for the current calendar year; to repeal the provision of said Act requiring the computation of a three-year average of said digest for each county; to require that certain protests be made in writing; to provide that no single parcel included in such study shall have a sales price which exceeds 10% of the total sales price of all parcels included in such study; to clarify the method of appointing members of the Board

of Arbitration; to provide for the treatment of personal property in computing the equalized adjusted school property tax digests; to repeal section 6 of said Act creating the State Board of Equalization; to provide for an effective date; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. An Act to require the State Auditor to establish an equalized adjusted school property tax digest for each county in the State and for the State as a whole, approved March 20, 1970 (Ga. L. 1970, p. 542), as amended, is hereby amended by striking in the first paragraph of section 1 the words "preceding calendar year" and substituting in lieu thereof the words "current calendar year" so that when so amended said paragraph shall read as follows:

Current year

"**Section 1.** The State Auditor shall establish, no later than November 15, 1971, and each year thereafter, on a continuing basis, an equalized adjusted school property tax digest for each county in the State and for the State as a whole for the current calendar year, excluding therefrom all real and personal property exempted from taxation for school purposes. The Auditor is hereby authorized to establish a unit within the Department of Audits, consisting of such number of personnel as he deems necessary, in order to establish and maintain on a continuing basis said equalized adjusted school property tax digest. Said equalized adjusted school property tax digest shall be established and maintained as follows:".

Section 2. Said Act is further amended by striking subsection (d) of section 1 in its entirety and by striking from subsection (e) of section 1 the following "(b), (c) and (d)" and inserting in lieu thereof the following "(b) and (c)".

Section 3. Said Act is further amended by repealing subsection (f) of section 1 of said Act in its entirety and inserting a new subsection (f) to read as follows:

"(f) Establish no later than October 30, 1971, and thereafter as provided herein, for each county in the State, the average ratio of assessed value to true value of county property subject to taxation for school purposes, excluding public utility property, by establishing the ratio of assessed value to sales price for a representative number of parcels of real property, title to which was transferred during a preceding period of time, to be determined by the Auditor, and the average ratio of assessed value to sales price for the county as a whole based upon a representative number of usable transactions studied; provided, however, the representative number of parcels of real property used for such study shall not include any parcel, title to which was transferred pursuant to the exercise of the power of eminent domain; provided further, that no single parcel included in such study shall have a sales price which exceeds 10% of the total sales price of all parcels included in such study; and provided further, the Auditor shall supplement realty sales price data available in any county with actual appraisals of a representative number of parcels of farm property and industrial and commercial property located within the county, the title to which was not transferred within the period of time determined by the Auditor. The Auditor may make appraisals on other types of real property located within the county provided adequate reliable sales data cannot be obtained on such property. The Auditor shall use the same ratio for other personal property excluding motor vehicles and bank stock within the county as is finally determined for real property within the county."

Section 4. Said Act is further amended by striking the words "by registered mail" from section 4 of said Act.

Section 5. Said Act is further amended by inserting in subsection (a) of section 5 between the words "upon" and

"request" the word "written" so that subsection (a) of section 5 when so amended shall read as follows:

Questions of correctness.

"(a) The governing authority of the several counties and of the several municipalities having independent school systems, the local board of education of each county or area school district, and the independent school system shall, if feeling themselves or their constituents or patrons aggrieved, have a right, upon written request made within 30 days after receipt of such digest information, to refer the question of correctness of the sum of the current equalized adjusted school property tax digest of the county or independent school system area to the Auditor. It shall be the duty of the Auditor to take any steps necessary to make a speedy determination of the correctness of said digest and notify all interested parties of said determination within 45 days after receiving the request questioning the correctness of said digest."

Arbitrators.

Section 6. Said Act is further amended by repealing in its entirety subsection (b) of section 5 and inserting in lieu thereof a new subsection (b) to read as follows:

"(b) If the parties questioning the correctness of said digest are dissatisfied with the determination made by the Auditor pursuant to the provisions of subsection (a) of this section, they shall have the right, which must be exercised within 15 days after being notified of the determination made by the Auditor, to refer the question of the correctness of said digest, in writing, to a board of arbitrators consisting of three members, one to be chosen by the Auditor, one to be chosen by the complaining party requesting such arbitration, and one to be chosen within 15 days thereafter by the other two members of the board. In the event the two arbitrators cannot agree to a third member, the

Chief Justice of the Supreme Court of Georgia shall appoint said third member upon petition of either party with notice to the opposite party. Said board of arbitrators or a majority thereof shall, within 30 days after appointment of the full board, render their decision upon the correctness of the sum of the digest in question and the extent and manner in which the sum of such digest should be corrected, if correction of same is required, and said decision shall be final. The Auditor shall correct the digest in question in accordance with the decision of the board of arbitrators and shall report such corrections to the parties entitled to receive such information under the provisions of Section 4 of this Act. The members of the boards of arbitration shall take and subscribe to an oath before the Auditor to faithfully and impartially perform the duties required of them in connection with the controversy concerning the correctness of the sum of the digest in question and to render their decision thereon within the time required. The members of the board of arbitration shall be paid a sum not to exceed $100.00 per day for services rendered. All costs of arbitration of matters arising under the provisions of this Act shall be shared and paid equally by the Department of Audits and by the governing authority of the local board of education requesting such arbitration."

Section 7. Said Act is further amended by striking section 6 in its entirety.

Effective date.

Section 8. This Act shall become effective upon its approval by the Governor or upon its becoming law without his approval.

Section 9. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved April 3, 1972.

Georgia Acts 1970

EQUALIZED ADJUSTED SCHOOL PROPERTY TAX DIGEST ACT.

No. 1138 (House Bill No. 734).

An Act to require the State Auditor to establish an equalized adjusted school property tax digest for each county in the State and for the State as a whole, excluding therefrom real and personal property exempted from taxation for school purposes; to require such digest to be established and maintained each year on a continuing basis; to provide a method and manner for establishing and maintaining such digest; to authorize the use of certain personnel and firms for the purpose of this Act; to provide for minimum qualifications and standards for employment and use of certain personnel and firms; to provide for the annual submission of certain digest information to the State Board of Education and to others; to provide that the Auditor shall make a determination as to the correctness of such digests upon the request of certain parties; to provide for the arbitration of disputes and for the selection, oath, qualifications and compensations of arbitrators and for the finality of their decision; to provide for the payment of costs of arbitration; to provide that no computations shall be made on the basis of such digests under certain conditions; to provide for the creation of a Board of Equalization; to provide that the Board shall formulate certain policies, procedures, standards, and criteria; to provide for all procedures, requirements and other matters relative to the foregoing; to provide that the average ratio of assessed value to true value of county property for school purposes for the 1969-1970 calendar years shall be the same such ratio as was used for such purposes in 1968; to repeal

a specific Act; to provide an effective date; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. The State Auditor shall establish, no later than November 15, 1971, and each year thereafter, on a continuing basis, an equalized adjusted school property tax digest for each county in the State and for the State as a whole for the preceding calendar year, excluding therefrom all real and personal property exempted from taxation for school purposes. The Auditor is hereby authorized to establish a unit within the Department of Audits, consisting of such number of personnel as he deems necessary, in order to establish and maintain on a continuing basis said equalized adjusted school property tax digest. Said equalized adjusted school property tax digest shall be established and maintained as follows:

(a) Determine the locally assessed valuation of the county property tax assessment digest for the preceding calendar year, exclusive of real and personal property exempted from taxation for school purposes and exclusive of public utility property shown on the county public utility property tax digest.

(b) Divide the sum of the locally assessed valuation of the county property tax assessment digest by the ratio of assessed value to true value of such property established by the Auditor in accordance with provisions of subsection (f) of this Section.

(c) Determine the sum of the assessed valuation of the county public utility property tax digest for the preceding calendar year and divide said sum by the equalization ratio for such year established by the State Revenue Commissioner for the purpose of assessing public utility properties throughout the State.

(d) Beginning with the report established on November 15, 1973, add the sums obtained by the calculations prescribed in subsections (b) and (c) of this Section to the sums obtained by such calculations for each of the immediately preceding two years and divide the result by three to obtain an average of said sums for the most recent three years.

(e) The total of the sums obtained through the calculations prescribed in subsections (b), (c) and (d) of this Section shall be known as the current equalized adjusted school property tax digest of the county, and the sum of the current equalized adjusted school property tax digest of all counties of the State combined shall be known as the current equalized adjusted school property tax digest for the State as a whole.

(f) Establish no later than October 30, 1971, and thereafter as provided herein, for each county in the State, the average ratio of assessed value to true value of county property subject to taxation for school purposes, excluding public utility property, by establishing the ratio of assessed value to sales price for a representative number of parcels of real property, title to which was transferred during a preceding period of time, to be determined by the Auditor, and the average ratio of assessed value to sales price for the county as a whole based upon a representative number of usable transactions studied; provided, however, the representative number of parcels of real property used for such study shall not include any parcel, title to which was transferred pursuant to the exercise of the power of eminent domain; provided further, that no single parcel included in such study shall have a sales price which exceeds 5% of the total sales price of all parcels included in such study; and provided further, the Auditor shall supplement realty sales price data available in any county with actual appraisals of a representative number of parcels of farm property and industrial and commercial property located

within the county, the title to which was not transferred within the period of time determined by the Auditor. The Auditor may make appraisals on other types of real property located within the county provided adequate reliable sales data cannot be obtained on such property, and he may develop separate ratios for personal property.

Section 2. The average ratio of assessed value to true value of county property to be established by the Auditor for the purposes of subsection (f) of Section 1 of this Act shall be established through the use of personnel of the Department of Audits who have sufficient competence and expertise in the fields of property evaluation and appraisal techniques by way of education, training and experience.

Section 3. The average ratio of assessed value to true value determined for each county as hereinabove provided shall be used as provided for in this Act until such time as a new ratio is determined, on a continuing basis, for a particular county; provided, however, when any county digest submitted to the State Revenue Commissioner under the provisions of Code Section 92-6917 reflects an increase or decrease of 5% or more from the digest of the year in which the last ratio was established for that county in accordance with subsection (f) of Section 1 of this Act, it shall be the duty of the Auditor, in accordance with the procedures prescribed herein, to determine a new ratio for such county as soon as the necessary studies can be completed.

Section 4. On or before November 15, 1971, and each year thereafter, the Auditor shall furnish to the State Board of Education the sum of the current equalized adjusted school property tax digest of each county in the State and the sum of the current equalized school property tax digest for the State as a whole, determined in accordance with the provisions of this Act. As to those counties which have more than one school system located therein, the Auditor shall furnish the State Board of Education a

breakdown of the current county equalized adjusted school property tax digest showing the amount thereof applicable to property located within each of the school systems located within the county. At the same time, the Auditor shall furnish, by registered mail, the governing authority of each county and each municipality having an independent school system, the local board of education of each county and independent school system, the tax commissioner or tax collector of each county and the board of tax assessors of each county, the sum of the current equalized adjusted school property tax digest of the county or the independent school system area, as the case may be, and the sum of the current equalized adjusted school property tax digest for the State as a whole.

Section 5. (a) The governing authority of the several counties and of the several municipalities having independent school systems and the local board of education of each county or area school district and the independent school system shall, if feeling themselves or their constituents or patrons aggrieved, have a right, upon request made within 30 days after receipt of such digest information, to refer the question of correctness of the sum of the current equalized adjusted school property tax digest of the county or independent school system area to the Auditor. It shall be the duty of the Auditor to take any steps necessary to make a speedy determination of the correctness of said digest and notify all interested parties of said determination within 45 days after receiving the request questioning the correctness of said digest.

(b) If the parties questioning the correctness of said digest are dissatisfied with the determination made by the Auditor pursuant to the provisions of subsection (a) of this Section, they shall have the right, which must be exercised within 15 days after being notified of the determination made by the Auditor, to refer the question of the correctness of said digest to a board of arbitrators consisting of

three members, one to be chosen by the Auditor, one to be chosen by the governing authority of the local board of education requesting such arbitration, and one to be chosen within 15 days thereafter by the other two members of the board. In the event the two arbitrators cannot agree to a third member, the Chief Justice of the Supreme Court of Georgia shall appoint said third member upon petition of either parties with notice to the opposite party. Said board of arbitrators or a majority thereof shall, within 30 days after appointment of the full board, render their decision upon the correctness of the sum of the digest in question and the extent and manner in which the sum of such digest should be corrected, if correction of same is required, and said decision shall be final. The Auditor shall correct the digest in question in accordance with the decision of the board of arbitrators and shall report such corrections to the parties entitled to receive such information under the provisions of Section 4 of this Act. The members of the boards of arbitration shall take and subscribe to an oath before the Auditor to faithfully and impartially perform the duties required of them in connection with the controversy concerning the correctness of the sum of the digest in question and to render their decision thereon within the time required. The members of the board of arbitration shall be paid a sum not to exceed $100.00 per day for services rendered. All costs of arbitration of matters arising under the provisions of this Act shall be shared and paid equally by the Department of Audits and by the governing authority of the local board of education requesting such arbitration.

(c) Upon receiving notice that the sum of the current equalized adjusted school property tax digest of any county or independent school system in being questioned pursuant to the provisions of subsection (a) of this Section, it shall be the duty of the Auditor to notify the State Board of Education that such digest is being questioned, and no com-

putations shall be made on the basis of such digest under the provisions of the Act known as the "Minimum Foundation Program of Education Act", approved January 24, 1964 (Ga. L. 1964, p. 3), as amended, until said digest has been corrected, if necessary, pursuant to the provisions of subsections (a) and (b) of this Section.

Section 6. (a) There is hereby created the Board of Equalization which shall be composed of one member from each of the congressional districts who shall be appointed by the Governor subject to the confirmation of the Senate. The Governor, in making his initial appointments, shall appoint two members for a term of office of one year, two members for a term of office of two years, two members for a term of office of three years, two members for a term of office of four years, and two members for a term of office of five years. Thereafter all appointments of successors to the initial members of the Board shall be for terms of office of five years. The members of the Board shall receive the same compensation, per diem, expenses and allowances as are authorized for legislative members of interim legislative study committees, and such compensation, expenses per diem and allowances shall be paid from the funds appropriated and available to the Department of Audits.

(b) The Board shall be charged with the duty and responsibility of formulating policies, procedures, standards and criteria to be employed by the State Auditor in regard to the studies and duties imposed upon him by the provisions of this Act. Such policies, procedures, standards and criteria shall not conflict with the provisions of this Act, however. In conducting such studies and in establishing such ratios, the State Auditor shall perform such activities in conformity with and pursuant to the directives, policies, standards, procedures and criteria established therefor by the Board and the provisions of this Act.

(c) The Board shall elect one of their number to serve as chairman for the ensuing 12 month period at the first meeting conducted by the Board in each year. The Board shall meet at the call of the chairman.

Section 7. Notwithstanding any provisions of this Act to the contrary, for the calendar years 1969 and 1970, the equalized school property tax digest for each county and the State as a whole shall be the same such digests, as corrected, as were prepared by the State Auditor and used for the purposes of this Act for the 1968 calendar year. The average ratio of assessed value to true value of county property for school purposes to be used for the calendar year 1970 shall be the same such ratios as were used for the purposes of this Act in the calendar year 1968. The State Auditor shall not make a State ratio study in 1970.

1964 act repealed

Section 8. An Act requiring the State Auditor to establish an equalized adjusted school property tax digest for each county in the State and the State as a whole, excluding therefrom real and personal property exempted from taxation for school purposes, approved March 18, 1964 (Ga. L. 1964, p. 706), as amended by an Act approved March 10, 1966 (Ga. L. 1966, p. 449), and an Act approved March 11, 1968 (Ga. L. 1968, p. 283), is hereby repealed in its entirety.

Effective date

Section 9. This Act shall become effective upon its approval by the Governor or upon its becoming law without his approval.

Section 10. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved March 20, 1970.

APPENDIX H

Ga. Code Ann.

92-116. Money, how taxed.—A property tax is levied for the year 1938 and annually thereafter at the rate of 10 cents on each $1,000 of the fair market value of all money as of the first day of January, without deduction of any indebtedness or liability of the taxpayer. (Acts 1937-38, Extra. Sess., pp. 156, 159.)

* * * * * * *

Georgia Laws, Acts 1937-38, Extra. Sess.

INTANGIBLES—CLASSIFICATION.

No. 68.

An Act to classify property for taxation; to levy taxes on certain classes of intangible personal property; to provide that no taxes shall be levied on these particular classes of intangible personal property other than those levied by this Act; to provide for the return, ascertainment, assessment and collection of these taxes and the distribution of the proceeds; to provide for exemptions; to provide penalties for the violation of this Act; to provide the purposes for which the proceeds may be spent; to require bonds in injunction suits; to require certain persons to furnish information to aid in the enforcement of this Act; to authorize proceedings in the Superior Court to obtain information for the enforcement of this Act; to conditionally commute taxes levied but not collected prior to 1938; to provide that the failure to return any bond or note shall be a complete defense to any suit on the same; to provide limitations upon proceedings to collect taxes levied prior to 1938 against intangible property; to make appro-

priations for administration; to declare that if any part or application of the Act shall be adjudged to be invalid such judgment shall not affect the remainder of this Act; to repeal all laws and parts of laws in conflict with this Act; and for other purposes.

Be it enacted by the General Assembly of the State of Georgia:

Words defined.

Section 1. The Term "Revenue Commission" or "Commission" is hereby defined for purposes of this Act to mean the State Revenue Commission of Georgia or any successor agency which may be established by law; provided that, should the said Revenue Commission be succeeded by two or more agencies of the State, that agency which administers income taxes shall be deemed to be the "Revenue Commission" or "Commission" under the terms hereof.

The word "person" is hereby defined for purposes of this Act as including all individuals, partnerships, associations, fiduciaries and corporations, unless the context clearly implies a different definition.

The word "taxpayer" for purposes of this Act is hereby defined as including all persons required by this Act to file tax returns and pay to appropriate officers or agencies of the State the taxes levied hereby.

The use of the pronouns "he, his, him, or himself" shall be construed to refer not only to individuals but to any, every and all partnerships, associations, firms, fiduciaries and corporations coming within the purview of this Act.

"Intangible personal property" is hereby defined for the purposes of this Act as capital stock of all corporations, money, notes, bonds, accounts or other credits, secured or unsecured, patent rights, copyrights, franchises, and all

other classes and kinds of property defined by law as intangible personal property whether or not enumerated in this definition and whether or not similar to those classes enumerated.

"Money" is hereby defined for purposes of this Act as specie, currency, and credits resulting from the deposit of money, currency, checks, bills and other evidences of such credits.

Classes of property; how taxed.

Section 2. Real property (including leaseholds which are hereby classified as real property) and tangible personal property shall be taxed as now provided by law. All intangible personal property is hereby classified, in keeping with the Constitutional Amendment adopted in 1937. Franchises and all shares of building and loan associations and all shares of banks or banking associations, including Federal Land Banks, together with all moneyed capital in the hands of individual citizens of Georgia coming into competition with the business of National Banks, and accounts receivable and all notes except those representing credits secured by real estate are hereby classified to be taxed as heretofore provided by law and shall not be subject to the provisions of the following sections of this Act.

Rates.

Money.

Section. 3.

(a) A property tax is hereby levied for the year 1938 and annually thereafter at the rate of ten cents ($0.10) on each one thousand dollars ($1,000) of the fair market value of all money as of the first day of January, without deduction of any indebtedness or liability of the taxpayer.

Notes.

(aa) A property tax is hereby levied for the year 1938 and annually thereafter at the rate of one dollar and fifty cents ($1.50) on each one thousand ($1,000.00) dollars, of the fair market value of all notes or other obligations insured by the Federal Housing Administration (except those owned by banks) and of all notes or other obligations representing loans, secured by real estate, made by state building and loan associations and federal savings and loan associations for the purpose of financing of homes, as of the first day of January, up to the value of five thousand ($5,000) dollars each. Any fair market value thereof in excess of five thousand ($5,000) dollars shall be taxed as provided in the following subsection of this section.

Other personalty.

(b) A property tax is also hereby levied for the year 1938 and annually thereafter at the rate of three dollars ($3.00) on each one thousand dollars ($1,000) of the fair market value of all other intangible personal property as of the first day of January, (than that subject to tax under subsection (a) and (aa)), without deduction of any indebtedness or liability of the taxpayer; provided, however, that this tax shall not apply to those classes of intangible personal property explicitly excluded under the terms of section 2 of this Act.

Exclusion of other taxes.

(c) The taxes imposed herein shall be in lieu of all other State, county, municipal, and district property taxes on intangible personal property classified for taxation at the rates specified in this section.

Competing capital

(d) Notwithstanding any provision of this Act, all moneyed capital in the hands of individual citizens of

Georgia coming into competition with the business of national banks shall be subject to tax at the same rate which is applicable to said national banks; and it shall be the duty of the Revenue Commission, or such authority as may succeed the present Revenue Commission, to designate any intangible property reported to it under the provisions of this Act which constitutes money capital in the hands of individual citizens of Georgia in competition with the business of national banks at the time the assessed valuation is certified under the provisions of this Act to be subjected to the State and local tax rates provided for real and tangible personal property and for bank shares. The Revenue Commission shall certify to the respective County Tax Commissioner or Receiver the assessed valuations of intangible property subject to local tax in each county and the said Commissioner or Receiver shall place the said intangibles which are in the hands of individual citizens of Georgia coming into competition with the business of national banks, on the local tax digest as heretofore provided by law.

Persons subject

(e) Every resident or nonresident person, including partnerships whose members are in whole or in part nonresidents of this State, is hereby declared to be subject to the tax imposed in this Act on so much of his property taxable under this section as shall have been acquired in the conduct of, or used incident to, business carried on or property located in this State. Each such person shall report such property and pay taxes thereon as provided by law, for citizens of this State.

Taxable situs

(f) Intangible property including money owned by a person domiciled in Georgia which has acquired a taxable situs and is subjected to tax in another State incident to

the conduct of business located in the said other State shall not be deemed to be taxable under the provisions of this section.

Returns in detail

Section 4.

(a) Every person owning intangible personal property, classified for taxation under the terms of section 3 of this Act except those intangibles classified to be taxed as heretofore provided by law is hereby required to file a return thereof describing in detail each item, (including exempt as well as taxable property except obligations of the United States) with the Commission at the same time and in the same manner that income tax returns are required by law to be filed. Any person required by law to file an income tax return shall file with the same as a separate schedule the return required hereunder giving a description thereof in such form as the Commission may reasonably require, showing the face value of each item of such intangible personal property and such other information pertaining to said return as the Commission may reasonably require. The said schedule shall be separately sworn to and shall be filed by every owner of intangible personal property listed in section 3 irrespective of whether the said owner is required by law to file an income tax return. Provided, that intangible personal property belonging to the United States Government or to the State of Georgia or to any political subdivision thereof; intangible personal property belonging to any religious, educational or charitable organization; non-profit co-operative associations; and money belonging to persons residing outside the State of Georgia (except as provided in section 3(e) of this Act) shall be excluded from such sworn statement and shall not be taxable.

Fiduciaries

Provided, however, that any person, agent, trustee, receiver or other fiduciary holding money belonging to others may make returns for such other persons and may pay the tax thereon as provided in this Act when so authorized by the person owning such money.

Failure a bar to suit

Penalty and interest

(b) It is hereby provided that wilful failure to list any property with the State Revenue Commission for taxation as required by the terms of this Act shall be a bar to any action upon the same in any court and may be pleaded as a complete defense; but the holder thereof may at any time pay all taxes, penalties and accrued interest, including the twenty-five per cent (25%) penalty provided in this Act, and thereupon, without dismissal of the original suit, be relieved from the penalty above provided.

Rules and regulations

Section 5. It is hereby provided that the schedules required under this Act to be filed with the Revenue Commission shall be subject to the rules and regulations provided for the administration of income taxes in so far as the same may be applicable and shall be subject to the same provisions of law with respect to the right of the Commission to investigate the books and records of any taxpayer or agent of any taxpayer, and shall be subject to hearings and appeals in all respects as provided by law for income taxes.

Banks

The provisions of this Act shall not require any bank doing business in this State to make any returns for any taxpayer, nor pay any tax for any taxpayer.

Added penalty

Misdemeanor

Section 6. In addition to the penalties and interest elsewhere provided in this Act, every taxpayer failing to report for taxation all intangible property which it is his duty to report under the terms of this statute shall pay an additional penalty as part of the tax imposed hereunder an amount equal to twenty-five per cent (25%) of the original tax on property not listed. Any person who shall wilfully violate the terms of this Act or shall wilfully fail to do any act required of him hereunder shall be deemed guilty of a misdemeanor and punished as provided by law.

Exemptions

Public trusts

Section 7. Intangible personal property owned by, or irrevocably held in trust for the exclusive benefit of, religious, educational and charitable institutions, no part of the net profit from the operation of which can inure to the benefit of any private person; the evidence of debt of the State of

Bonds

Stocks

Invalid exemptions

Georgia, its public institutions and its municipal corporations and subdivisions; and obligations of the United States Government are hereby exempt from the tax imposed by section 3 of this Act. The stock of corporations organized under the laws of the State of Georgia are also exempt from said tax if such corporation pays all taxes in Georgia as now provided for by law, provided that, this exemption shall in no event be construed to apply to shares of banks

or banking associations (or moneyed capital in the hands of individual citizens of Georgia in competition with national banks), nor shall it be deemed to modify, amend or repeal the provisions of the property tax (including the franchise tax as applied to utility corporations) on property owned by a corporation organized under the laws of Georgia or the capital stock (license) tax applying to corporations organized under the laws of Georgia. However, should any court of last resort determine that exemption of any property provided in this Act is unconstitutional or invalid, it is hereby declared the legislative policy that this Act would have been passed had not such unconstitutional or invalid exemption been incorporated. The General Assembly hereby subjects such intangible personal property to the tax under this Act.

Foreign corporations

Section 8.

(a) Every foreign corporation doing business or owning property in Georgia, the stock and bonds of which are subject to tax under this Act, shall on or before the first day of March of each year make a true and correct, verified report to the Commission, giving in such form as the Commission may require, the names and addresses of persons in Georgia who held its shares of stock or its registered bonds on January 1 next preceding, and in addition thereto a list of stock or registered bonds transferred from such persons between November 1 and January 1 next preceding the date of the return.

Georgia corporations

(b) Every Georgia corporation the bonds and stocks of which are subject to tax under this Act shall on or before the first day of March of each year make a true and correct, verified report to the Commission giving in such form

as the said Commission may require, the names and addresses of persons in Georgia who held its registered bonds and preferred stock on January 1 next preceding, and in addition a list of its registered bonds and preferred stock transferred from such persons between November 1 and January 1 next preceding the date of the return. (Intangible property transferred prior to January 1 to avoid the tax imposed hereunder or to secure a reduction in the rate thereof is hereby made subject to the tax levied by this Act.)

Sworn statements

(c) The Commission, if in its judgment the information is reasonably required for the administration of this Act, is hereby authorized to require any public official, corporation, co-partnership, individual, trustee or pledgee, or any class thereof, to provide a sworn statement respecting the ownership of intangible personal property, or of particular classes thereof, of which said person, or class of persons, has knowledge.

Administration of this Act

Section 9. The Revenue Commission or its successors in authority is hereby charged with the administration of this Act. It shall prepare the forms it deems necessary and shall make such rules and regulations as it finds desirable to enforce the provisions hereof. The Commission or its agents authorized in writing so to do may examine any books, papers, records, or other data (including information in the hands of agents or fiduciaries or other persons) bearing upon the correctness of any returns, or for the purpose of making a return where none has been made as required by this Act.

Compulsory production of evidence

If any individual, corporation, partnership, or fiduciary, or any officer or employee or member of the partnership

required under this law to pay any tax, make any return, or supply any information, or exhibit any books or records when requested to do so by the Commission, whether with reference to their own returns or not, shall refuse to do so, the Superior Court for the county in which such persons resides shall have jurisdiction by appropriate process to compel such testimony or production of books, papers, or other data.

Fixing of values, etc.

Section 10. As soon as practicable after receipt of the returns of intangible property under section 4, the Commission shall examine the said returns and fix the value of such property as can be centrally assessed. If the taxpayer shall not file a return the Commission is hereby authorized to make return for said taxpayer on the basis of information available, and to make assessments. The Commission shall certify the assessments fixed to the various County Tax Commissioners or Tax Receivers, with regard to the situs of such property, and the said County Tax Commissioners or Tax Receivers shall record the value certified by the Commission and shall make assessment of all property certified but not assessed and shall cause the aggregate values so fixed to be entered on the property tax digest of the county. At or before the time certification is made to local officials, the Commission shall notify the taxpayer of the assessment; and said taxpayer shall have fifteen days within which he may offer objection. The said Commission may, in the event of an error, make a corrected certification, but in no event shall such a correction be made after the tax has become delinquent under the terms of this Act. For this service, notwithstanding the fact that the assessment of all except localized intangible personal property is fixed by the Commission, the County Tax Receiver or Tax Commissioner shall be entitled to his usual Commissions as though he himself made the assessment. The taxes on said property at the rates fixed herein shall

be collected by the County Tax Collectors subject to general provisions of law as to remuneration of the collector and to all the remedies now provided by law for enforcement or collection of real and tangible personal property taxes. The said intangible property taxes shall be a lien on all the property of the taxpayer with the rank provided by law for tax liens.

Distribution of revenue.

Section 11. The County Tax Collector, on the basis of his records and of certificates, hereby required to be supplied by each school district, municipality and other taxing district in the county, at least monthly shall distribute the revenue collected from each owner of tangible property between the State and the various local taxing districts in the manner hereinafter set out. This plan of distribution is designed in some substantial measure to compensate taxing districts for the loss of revenues incident to the operation of the Homestead exemptions amendment to the Constitution of Georgia, adopted in June, 1937, as well as to supply revenue which the said Constitution contemplates shall be available to municipalities, counties, and other taxing districts.

(a) Revenue derived from taxes on intangible personal property the taxable situs of which is not within any incorporated municipality which maintains its own school system, any tax levying school district, or other special taxing district shall be divided between the State, the County General Funds and the County School Funds in the proportion that the aggregate millage rate for county purposes and the aggregate millage rate for school purposes and the aggregate millage rate for State purposes respectively bear to the grand total millage rate for all purposes applicable to real and tangible personal property similarly located, in each county.

(b) Revenue derived from taxes on intangible personal property the taxable situs of which is not within any incorporated municipality or other special taxing district but within a tax levying school district shall be divided between the State, the County General Funds, the County School Fund, and the School Fund of the School District in which said property has a taxable situs in the proportion that the millage rate for State purposes, for county purposes, for county school purposes and for local school district purposes respectively bear to the grand total millage rate for all purposes applicable to real and tangible personal property similarly located.

(c) Revenue derived from taxes on intangible personal property the taxable situs of which is within an incorporated municipality but not within any other special taxing district shall be divided between the State, the County General Fund and the Municipal General Fund in the proportion that the aggregate millage rate for State purposes, the aggregate millage rate for county purposes and the aggregate millage rate for municipal purposes respectively bear to the grand total millage rate for all purposes applicable to real and tangible personal property similarly located; provided, however, that if the school district in which the said intangible property has a taxable situs shall make a levy separate from the municipal levy, the revenue shall be divided between the State, the County General Fund, the Municipal General Fund and the School Fund in the proportion represented by the respective millage rates.

(d) Revenue derived from taxes on intangible personal property the taxable situs of which is within an incorporated municipality but not within any other special taxing district, and within a county having a county-wide school system, shall be divided between the State, County General Fund, County School Fund, and the Municipal General Fund in the proportion that the millage rate for State purposes, for county purposes, for County School purposes,

and for municipal purposes respectively bear to the grand total millage rate for all purposes applicable to real and tangible personal property similarly located.

(e) In the event the said intangible personal property has a taxable situs in some other special taxing district or districts, the division between State, County, School, Municipal and other special taxing districts shall be in the proportion represented by the respective aggregate millage rates applicable to real and tangible personal property similarly situated. The tax levied in section 3 hereof shall be deemed to be levied by the participating taxing authorities in the proportion that the millage rate of each participating taxing authority bears to the aggregate millage rate of all of the participating taxing authorities.

Provisos.

Provided that, in the event any distribution or part thereof as herein provided shall, for any reason be adjudged to be invalid, such distribution or part thereof, so invalidated, shall be paid into the State Treasury in the same manner and for the same purposes as hereinafter provided in section 12 as to the State's share of the revenues derived from the tax imposed by this Act.

Provided further that, in the event any distribution or part thereof, as provided herein to be made to municipalities or counties, shall be adjudged to be invalid, the political sub-divisions affected and all other sub-divisions of the same class throughout the State shall be entitled and empowered to impose taxes upon the classes of property, included within this bill, as now provided by law. Provided, however, that in no event shall any political subdivision or taxing authority, levy a tax on intangible property classified and taxed under this Act and not classified to be taxed as now provided by law, at a rate in excess of 20% of the rate levied by such political sub-division or taxing authority on tangible property.

State's share

Section 12. The State's share of the revenue derived from the taxes imposed by section 3 of this Act shall be covered into the State Treasury. For the administrative cost of this Act and for expense thereof the Governor may authorize the Revenue Commission, to expand an amount equal to the actual expenses of administering this Act, which shall in no event exceed the sum of 1% (one per cent) of the State's share of the revenue derived from this Act.

Bond on injunction

Section 13. In all applications to restrain or enjoin the collection of any tax imposed by this Act, the judge, should he grant a restraining order or temporary injunction, shall require the petitioner to give a good and sufficient bond payable to the County Tax Collection in double the amount of the tax, the collection of which is sought to be enjoined, to be approved by the Clerk of the Superior Court, conditioned to pay the tax in the event petitioners does not finally prevail in his effort to resist the payment of the said tax; and it shall be the duty of the Tax Collector to bring suit on said bond and distribute the amount recovered according to the provisions of section 11.

Non-returns in previous years

Section 14. The owner of any class of intangible property taxable under section 3 of this Act, who failed to return such property for taxation in any year prior to 1938, shall be subject to taxes for all prior years within the statute of limitation in the same manner and under the same rules and regulations as heretofore required by law. Except that any taxpayer who complies with the requirements of this Act by making a true return of his intangible property as specified in section 4 of this Act by March 15, 1938, shall not be required to pay tax on any such intangibles for years prior to 1938, on which no return or assessment

has been made or on which no litigation has been instituted either by the taxing authorities or the taxpayer prior to January 1, 1938. Such omitted taxes upon the taxpayer's compliance with the provisions of this Act are hereby declared to be barred as by a statute of limitation.

Saving clause

Section 15. Be it further enacted that each provision and section of this Act be and the same is hereby separately enacted and if any clause, sentence, paragraph, part or application of this Act shall for any reason be adjudged to be invalid, by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, part or application thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 16. All laws and parts of laws in conflict with this Act are hereby repealed but only to the extent that they are in conflict with this Act.

Approved December 27, 1937.

APPENDIX I

Article I.

Bill of Rights.

Section I.

Chapter 2-1. Rights of the Citizen.

2-103. (6359) Paragraph III. **Life, liberty, and property.**—No person shall be deprived of life, liberty, or property, except by due process of law.

2-102. (6358) Paragraph II. **Protection the duty of government.**—Protection to person and property is the paramount duty of government, and shall be impartial and complete.

Article VII.—Finance, Taxation, etc. Section I.,
Chapter 2-5. Power of Taxation.

2-5403. (6553) Paragraph III. **Uniformity; classification of property.**—All taxes shall be levied and collected under general laws and for public purposes only. All taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. Classes of subject for taxation of property shall consist of tangible property and one or more classes of intangible personal property including money. The General Assembly shall have the power to classify property including money for taxation, and to adopt different rates and different methods for different classes of such property.

APPENDIX J

Code of Georgia

Annotated

Title 81A

I

Pleading Under the Civil Practice Act

Chapter 81A-1

Procedure

81A-123. [CPA § 23] Class actions.—

(a) Representation.—If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is:

(1) Joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;

(2) Several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action.

(b) Secondary action by shareholders.—In an action brought to enforce a secondary right on the part of one or more shareholders in an association, incorporated or unincorporated, because the association refuses to enforce rights which may properly be asserted by it, the complaint shall be verified by oath and shall aver that the plaintiff was a shareholder at the time of the transaction of which

he complains or that his share thereafter devolved on him by operation of law. The complaint shall also set forth with particularity the efforts of the plaintiff to secure from the managing directors or trustees and, if necessary, from the shareholders such action as he desires and the reasons for his failure to obtain such action or the reasons for not making such effort. This section is cumulative of, and not intended to supersede, section 22-711.

(c) Dismissal or compromise.—A class action shall not be dismissed or compromised without the approval of the court. If the right sought to be enforced is one defined in paragraph (1) of subdivision **(a)** of this section notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. If the right is one defined in paragraphs (2) or (3) of subdivision **(a)** notice shall be given only if the court requires it. (Acts 1966, pp. 609, 632.)

Title 92

Public Revenue
In Book 26A, Division III
Returns, Assessments, and Collections
Administration of Tax Laws

Part I. In General

Chapter 92-57

Miscellaneous

II

92-5702 (1004) "Fair market value," meaning of

The intent and purpose of the tax laws of this State are to have all property and subjects of taxation returned at the value which would be realized therefrom by cash sale, as such property and subjects are usually sold, but not by forced sale thereof, and the words "fair market value,"

when used in the tax laws, shall be held and deemed to mean what the property and subjects would bring at cash sale when sold in the manner in which such property and subjects are usually sold.

(Acts 1909, p. 75, 1968, p. 358.)

III

92-5703 (1010) Tax to be levied by whom

All tangible property subject to taxation by the State, any county, or any other taxing jurisdiction shall be returned by the taxpayers as provided by law at its fair market value, and shall be assessed at 40 per cent of said fair market value and taxed according to said 40 per cent of its fair market value on a levy made by each respective taxing jurisdiction. The levy for State taxation shall be made by the Governor with the assistance of the State Revenue Commissioner.

It is the intent and purpose of the General Assembly of this State that the value of tangible property as referred to in the tax laws of this State shall be 40 per cent of the fair market value of such property. The requirement contained herein that all municipal corporations assess at 40 per cent of fair market value shall not apply to any municipal corporation whose ratio of assessed value to fair market value exceed 40 per cent for the tax year 1971; Provided, however that any municipal corporation so exempted shall in no event assess at a ratio less than 40 per cent.

(Acts 1851-2, p. 91; 1909, p. 37; 1968, pp. 358, 359; 1972, p. 1102.)

Part III. Returns to Tax Receivers

Chapter 92-62

Time, Manner, and Subject of Returns

IV

92-6201. Time for making tax returns.—The several tax receivers shall open their books for return of taxes on the first day of January and shall close same on the first day of April of each year. (Acts 1913, p. 123; 1945, pp. 424, 425; 1953, Nov. Sess., pp. 270, 271.)

Part V. Equalization of Assessments

Chapter 92-69

County Board of Tax Assessors; Powers and Duties

V

92-6902. When tax receiver shall present returns to county assessors.—Within 10 days after the first day of April of each year the tax receiver of each county shall present the tax returns of the county for the current year to the county board of tax assessors created by this Chapter for the purpose hereinafter contemplated and provided. (Acts 1913, p. 123; 1945, p. 423.)

VI

92-6911. Meeting of board; duties.—(a) Method of giving notice to taxpayer of changes made in his return.—The board of county tax assessors in each county may meet at any time to receive and inspect the tax returns to be laid before them by the tax receiver as hereinbefore provided. The board shall examine all the returns of both real and personal property of each taxpayers, and if in the opinion

of the board any taxpayer has omitted from his returns any property that should be returned or has failed to return any of his property at a just and fair valuation, the board shall correct such returns and shall assess and fix the just and fair valuation to be placed on the property and shall make a note thereof and attach the same to the returns. It shall be the duty of the board to see that all taxable property within the county is assessed and returned as its just and fair valuation and that valuations as between the individual taxpayers are fairly and justly equalized so that each taxpayer shall pay as near as may be only his proportionate share of taxes. When any such corrections, changes or equalizations shall have been made by the board, the board shall, within a period of five days, give written notice to any taxpayer of any changes made in his returns, either personally or by leaving the notice at his dwelling house or usual place of abode or place of business, with some person of suitable age and discretion residing or employed therein or by sending said notice through the United States mails to his last known address. If the notice is sent through the United States mails it shall be in such form and with sufficient postage to qualify the notice as first-class mail; in addition, and with respect to said mail, the board of county tax assessors' return address shall appear in the upper left corner of the mailing face with the direction if not delivered "Return in 5 days to" above said return address, and the lower left corner of the mailing face shall be clearly marked in bold type—"OFFICIAL TAX MATTER."

(b) Notice contents.—The notice required to be given by the board of county tax assessors under subsection (a) of this section shall be dated and contain the name and last known address of the taxpayer, the specific correction, if any, to the taxpayer's return, and, if the assessment of the value of the taxpayer's property is changed, the notice shall contain the amount of the previous assessment, the amount of the current assessment, and the year for which

the new assessment is applicable. In all cases, the notice shall contain a brief description of the assessed property broken down into real and personal property classifications and a reference to the applicable time period for residents and nonresidents in which arbitration may be demanded.

(c) Posting notice on certain conditions.—In all cases where a notice is required to be given to a taxpayer under subsection (a) of this section, if the notice is not given to the taxpayer personally or the notice is mailed but returned undelivered to the county board of tax assessors, then a notice shall be posted in front of the courthouse door for a period of 30 days, which posted notice shall contain the name of the owner liable to taxation, if known, or a brief description of the property if the owner is unknown, together with a statement that the assessment has been made, or the return changed or altered as the case may be, and need not contain other information. If shall be the duty of the ordinary of the county to make a certificate as to the posting of such notice, which certificate signed by the ordinary shall be recorded by the board of tax assessors in a book kept for that purpose. A certified copy of such certificate of the ordinary duly authenticated by the secretary of that board shall constitute prima facie evidence of the posting of such notice as required by law.

(Acts 1937, pp. 517, 519; 1970, pp. 580, 581; 1971, p. 33.)

VII

92-6912. Arbitration.—If any taxpayer is dissatisfied with the action of the board, he may within 10 days from the giving of said notice in case of residents, and within 20 days in case of nonresidents of the county, give notice to the board that he demands an arbitration, giving at the same time the name of his arbitrator; the board shall name its arbitrator within three days thereafter and these two shall select a third, a majority of whom shall fix the assess-

ments and the property on which said taxpayer shall pay taxes, and said decision shall be final, except as far as the same may be affected by the findings and orders of the State Revenue Commissioner as hereinafter provided. The said arbitrators shall be freeholders of the county and shall render their decision within 10 days from the date of the naming of the arbitrator by the board. In the event the two arbitrators provided for in this section fail to name a third within 20 days after their appointment, he shall be named by the judge of the superior court of the county wherein the property lies. Before entering upon a hearing the arbitrators shall take an oath before the tax receiver or before the chairman of the board of local assessors, who is hereby authorized to administer oaths, that they will faithfully and impartially make a true and just assessment of the tax returns and property in question, and will determine the matters submitted to them, according to law and justice and the equity of the case.

The taxpayer or the board of tax assessors may appeal the arbitrators' decision to the superior court of the county in which the land lies any time the difference between the valuation of the board of tax assessors and the valuation of the arbitrators exceeds the sum of $1,000. The appeal shall be filed with the clerk of the superior court within 30 days after the arbitrators' decision is filed with the board of tax assessors. The appeal shall constitute a de novo action and shall be heard before a jury at the first term following the filing of the appeal. The board of tax assessors shall use the valuation of the arbitrators in compiling the tax digest for the county. However, if the said court disagrees with the valuation of the arbitrators and fixes a different valuation on the property, the taxpayer shall receive a deduction in his taxes for the year in question if the valuation fixed by the judgment of said court is less than the valuation of the arbitrators. However, if the valuation of the said court is more than the valuation of the arbi-

trators, the taxpayer shall be liable for the increase in taxes for the year in question as a result of the increased valuation fixed by the said court.

(Acts 1913, pp. 123, 127; 1918, pp. 230, 231; 1931, pp. 7, 35. 150 Ga. 691, 697 (105 S. E. 243). 143 Ga. 368, 371 (85 S. E. 187). 254 U. S. 64, 70 (41 Sup Ct. Rep. 27, 65 L. Ed. 134). Acts 1958, p. 387; 1969, p. 942.)

VIII

92-6917. Revision and assessment to be completed when. Digest sent to State Revenue Commissioner.—The county boards of tax assessors shall complete their revision and assessment of the returns of taxpayers in their respective counties by June 1 of each year. The tax receiver shall then immediately forward one copy of the completed digest to the State Revenue Commissioner for examination and approval. (Acts 1913, pp. 123, 129; 1931, pp. 7, 35; 1945, p. 251).

Part VIII. Administration of Taxing Laws

Chapter 92-84

In General

IX

92-8406 Same; certain duties stated

In addition to other duties assigned by law to the commissioner, but without limitation of the same, it is hereby specifically provided that he shall: (a) direct that appropriate legal action be taken to enforce the revenue laws of Georgia; (b) the Attorney General to command the services of county attorney or solicitor general or to supply legal assistance from the Department of Law; (c) supervise all tax administration throughout the State, subject, however, to the sovereign rights of the counties to regulate their own

affairs; (d) make thorough study of taxation in Georgia and elsewhere with a view to improvement of administration and legislation affecting the people of Georgia; (e) make an annual report to the Governor and a biennial report to each regular session of the General Assembly; (f) publish such regulations, statistics, and other reports as he may deem wise within the limitations of his appropriation; (g) assist local tax officials in every feasible manner when so requested by such officials; and (h) as responsible revenue official of the State, advise the Governor on all matters relating to revenue.

(Acts 1937-38, Extra. Sess., pp. 77, 81; 1967, pp. 764, 765; 1970, pp. 298, 299; 1972, pp. 1125, 1128.)

X

ADMINISTRATIVE PROVISIONS

92-8427. Commissioner administers all tax laws; forms; examination of documents.—The State Revenue Commissioner is charged with the administration and supervision of all tax laws of the State. He shall prepare the forms he deems necessary and shall make such reasonable rules and regulations as he finds desirable to enforce the provisions thereof. The Commissioner or his agents authorized in writing so to do may examine any books, papers, records, or other data (including information in the hands of third parties) bearing upon the correctness of any return or for the purpose of making a return where none has been made as required by law. (Acts 1937-8, Extra. Sess., pp. 77, 91.)

Part II. Tax Receivers

XI

Chapter 92-46

In General

92-4611. (1197) Duties of receivers enumerated

It shall be the duty of the tax receiver

1. To receive all tax returns within the time and in the manner prescribed by law.

2. To make out and perfect the three digests in writing and figures plainly, legibly, and neatly, and to properly deposit them.

3. Post and maintain a notice showing the days on which his office is open for the purpose of receiving tax returns and the office hours.

4. To receive tax returns at any time when a taxpayer applies to give in his returns.

5. To embrace in his digest to the State Revenue Commissioner, the ordinary or other authority in charge of county affairs, and the tax collector, respectively, a list of all defaulters, and the amount of their taxes and the double taxes assessed against them, and of all property assessed by him which has not been returned, or other special action had in conformity to the laws.

6. To publish at the door of the courthouse, for 30 days, lists of all the defaulters and the amount of their double taxes.

7. To enter upon the digests deposited with the ordinary or other authority in charge of county affairs, the county taxes levied according to law, and the rate per cent as fixed by the ordinary or such other authority.

8. To conform to such rules as he may be furnished with, and to obey such orders as may be given by the State Revenue Commissioner.

9. To perform all other duties that the law requires, and which necessarily under the law appertain to his office.

10. To enter upon the digest prepared by him an itemization of all properties exempt from taxation along with the owners of such properties and the reason such properties are exempt from such taxation.

(Act 1804, Cobb, 1045. Act 1807, Cobb, 1054. Act 1812, Cobb, 1057. Act 1813, Cobb, 1059. Acts 1851-52, p. 290; 1962, p. 533; 1970, p. 641.)

Part III. Tax Collectors

XII

Chapter 92-49

Tax Collector's Duties in General

Sec.

92-4901 Collector's duties enumerated

92-4901.1 Ex-officio sheriffs for certain purposes

92-4902 Tax collectors required to keep cash book

92-4901 (1211) Collector's duties enumerated

It shall be the duty of the tax collector to—

1. Diligently collect and promptly pay over in the funds allowed by law the State and county taxes to the State Treasurer and the county treasurer, respectively.

(Acts 1804, Cobb, 1046. Act 1812, Cobb, 1058.)

Cross-reference

Collector to collect taxes on all property returned in the several counties, see § 92-6203.

2. Search out and ascertain as far as possible all polls and professions, and all taxable property not returned to the receiver or not found in his digests.

(Acts 1857, p. 131; 1858, p. 104.)

Cross-reference

Tax collector's oath, see § 92-4702.

3. Enter all of such defaults in a book kept for that purpose, to assess and collect thereon a double tax and pay the same over to the State Treasurer and county treasurer, respectively, after deducting single commissions, and to deposit said book with the State Revenue Commissioner, and a copy with the ordinary or other authority having charge of county affairs, before the day of final settlement.

(Acts 1862-63, p. 57; 1857, p. 131.)

4. Have his insolvent lists allowed in the manner provided by law before final settlement with the State Revenue Commissioner.

5. Post and maintain a notice showing the days on which his office is open for the purpose of collecting taxes and the office hours.

(Acts 1962, p. 532.)

6. Publish at the door of the courthouse, for 30 days, his insolvent lists, including the taxes of each person thereon.

7. Pay the receiver his commissions, upon the production of the State Revenue Commissioner's receipt for his digest, with a specification therein of the amount of commissions to which he is entitled, and not otherwise; and to

produce said receiver's receipts, with his receipts thereon, to the Commissioner, before he shall be allowed credits for such commissions.

8. Conform to such rules as may be furnished, and to obey such orders as may be given by the Commissioner.

9. Report the names of the persons or firms paying the special taxes that may be levied year after year, the amount paid, and the dates of said payments, to the Commissioner at the time of paying the tax into the State treasury.

(Acts 1878-79, p. 78.)

10. Issue executions against all tax defaulters and insolvents who are residents of the counties in which said tax collectors are holding their offices, for any and every year preceding and including the years for which they are elected, and to collect the tax due from said defaulters, and pay over the same to the proper authorities.

(Acts 1875, p. 120.)

11. Keep a permanent qualification or voters' book and make up the registration lists, as provided by sections 34-101 and 34-201 to 34-204.

12. Perform all other duties that the law requires, and which necessarily under the law appertain to his office.

XIII

Part VIII. Administration of Taxing Laws

Chapter 92-84. In General

92-8407.1 Approval of tax digests regardless of arbitrations or appeals; procedure

Notwithstanding any other laws to the contrary, the State Revenue Commissioner shall not be required to disapprove or withhold approval of the digest of any county solely

because appeals have been filed or arbitrations demanded on the assessment of any property, or number of properties, in the county. In such cases, the assessment or assessments fixed by the Board of Tax Assessors shall be listed together with the return value thereon and forwarded in a separate listing to the State Revenue Commissioner at the time the digest is filed for examination and approval: Provided, however, that the Revenue Commissioner shall not approve any digest where the assessed value fixed by the Board of Tax Assessors for any property, or properties, on appeal or in arbitration exceeds three per cent. of the total assessed value of the total digest of such county for the same year: Provided, further, that in any year where complete reevaluation or reappraisal programs are implemented, that five per cent. of the property or number of properties may be in arbitration or on appeal.

(Acts 1971, pp. 301, 302; 1972, p. 824.)

Editorial Note

Acts 1972, p. 824, added the proviso as to the number of properties that may be in arbitration or on appeal in any year where complete reevaluation or reappraisal programs are implemented.

Part V. Equalization of Assessments

Chapter 92-70.

Duties, Etc., of State Revenue Commissioner and State Auditor

XIV

92-7011 Same; information to be furnished State Board of Education

On or before November 15, 1971, and each year thereafter, the Auditor shall furnish to the State Board of Edu-

cation the sum of the current equalized adjusted school property tax digest of each county in the State and the sum of the current equalized school property tax digest for the State as a whole, determined in accordance with the provisions of this law [§§ 92-7008 through 92-7014]. As to those counties which have more than one school system located therein, the Auditor shall furnish the State Board of Education a breakdown of the current county equalized adjusted school property tax digest showing the amount thereof applicable to property located within each of the school systems located within the county. At the same time, the Auditor shall furnish the governing authority of each county and each municipality having an independent school system, the local board of education of each county and independent school system, the tax commissioner or tax collector of each county and the board of tax assessors of each county, the sum of the current equalized adjusted school property tax digest of the county or the independent school system area, as the case may be, and the sum of the current equalized adjusted school property tax digest for the State as a whole.

(Acts 1970, pp. 542, 546; 1972, pp. 829, 832.)

Cross-reference

See Editorial Note to § 92-7008.

Editorial Note

Acts 1972, pp. 829, 832, deleted the words "by registered mail" which formerly appeared in the last sentence.

XV

92-7012 Same; arbitration of disputes

(a) The governing authority of the several counties and of the several municipalities having independent school systems, the local board of education of each county or

area school district, and the independent school system shall, if feeling themselves or their constituents or patrons aggrieved, have a right, upon written request made within 30 days after receipt of such digest information, to refer the question of correctness of the sum of the current equalized adjusted school property tax digest of the county or independent school system area to the Auditor. It shall be the duty of the Auditor to take any steps necessary to make a speedy determination of the correctness of said digest and notify all interested parties of said determination within 45 days after receiving the request questioning the correctness of said digest.

(b) If the parties questioning the correctness of said digest are dissatisfied with the determination made by the Auditor pursuant to the provisions of subsection (a) of this section, they shall have the right, which must be exercised within 15 days after being notified of the determination made by the Auditor, to refer the question of the correctness of said digest, in writing, to a board of arbitrators consisting of three members, one to be chosen by the Auditor, one to be chosen by the complaining party requesting such arbitration, and one to be chosen within 15 days thereafter by the other two members of the board. In the event the two arbitrators cannot agree to a third member, the Chief Justice of the Supreme Court of Georgia shall appoint said third member upon petition of either party with notice to the opposite party. Said board of arbitrators or a majority thereof shall, within 30 days after appointment of the full board, render their decision upon the correctness of the sum of the digest in question and the extent and manner in which the sum of such digest should be corrected, if correction of same is required, and said decision shall be final. The Auditor shall correct the digest in question in accordance with the decision of the board of arbitrators and shall report such corrections to the parties entitled to receive such information under the

provisions of section 92-7011. The members of the boards of arbitration shall take and subscribe to an oath before the Auditor to faithfully and impartially perform the duties required of them in connection with the controversy concerning the correctness of the sum of the digest in question and to render their decision thereon within the time required. The members of the board of arbitration shall be paid a sum not to exceed $100 per day for services rendered. All costs of arbitration of matters arising under the provisions of this law [§§ 92-7008 through 92-7014] shall be shared and paid equally by this Department of Audits and by the governing authority of the local board of education requesting such arbitration.

(c) Upon receiving notice that the sum of the current equalized adjusted school property tax digest of any county or independent school system in being questioned pursuant to the provisions of subsection (a) of this section, it shall be the duty of the Auditor to notify the State Board of Education that such digest is being questioned, and no computations shall be made on the basis of such digest under the provisions of the Minimum Foundation Program of Education Act [Chapter 32-6], until said digest has been corrected, if necessary, pursuant to the provisions of subsections (a) and (b) of this section.

(Acts 1970, pp. 542, 546; 1972, pp. 829, 832.)

Cross-reference

See Editorial Note to § 92-7008.

Editorial Note

Acts 1972, pp. 829, 832, added the word "written" before "request" in subsection (a), and rewrote subsection (b).

Title 81A

Pleading Under the Civil Practice Act

Chapter 81A-1

Procedure

XVI

PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

81A-165. [CPA § 65] Injunctions.—

(a) Preliminary; notice.—No interlocutory injunction shall be issued without notice to the adverse party.

(b) Temporary restraining order; notice; hearing; duration.—No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; and shall expire by its terms within such time after entry, not to exceed 30 days, as the court fixes, unless the party against whom the order is directed consents that it may be extended for a longer period. In case a temporary restraining order is granted without notice, the motion for an interloctuory injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for an interloctuory injunction, and if he does not do so, the court shall dissolve the temporary restraining

order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security.—As a prerequisite to the issuance of a restraining order or interlocutory injunction the court may require the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. A surety upon a bond or undertaking under this section submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security, if their addresses are known.

(d) Form and scope of injunction or restraining order.—Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice of the order by personal service or otherwise.

(e) When inapplicable.—This section is not applicable to suits for divorce, alimony, separate maintenance or cus-

tody of children. In such suits, the court may make prohibitive or mandatory orders, with or without notice or bond, and upon such terms and conditions as the court may deem just. (Acts 1966, pp. 609, 665; 1967, pp. 226, 240.)

Title 6

Appeal and Error

Part II. Taking Cases to Supreme Court or Court of Appeals

Chapter 6-7.

What Causes Reviewable

XVII

6-701 Appeals from lower courts; finality of judgments; mandamus, quo warranto, and prohibition cases; effect of appeal

(a) Appeals may be taken to the Supreme Court and Court of Appeals from judgments and rulings of the superior courts, the constitutional city courts, and such other courts or tribunals from which writs of error are authorized by the Constitution and laws, in the following instances:

1. Where the judgment is final—that is to say— where the cause is no longer pending in the court below.

2. Where the trial judge in rendering an order, decision or judgment not otherwise subject to direct appeal, certifies within 10 days of entry thereof that such order, decision or judgment is of such importance to the case that immediate review should be had.

3. From all judgments involving applications for discharge in bail trover and contempt cases; from all judgments or orders directing that an accounting be had; from all judgments or orders granting or refusing application for receivers, or for interlocutory or final injunction; from all judgments or orders rendered after hearing, continuing in effect, modifying, vacating, or refusing to continue, modify or vacate a temporary restraining order; from all judgments or orders granting or refusing applications for attachment against fraudulent debtors; from all judgments or orders granting or refusing to grant applications for alimony, either temporary or permanent, mandamus or other extraordinary remedy; from all judgments or orders refusing applications for dissolution of corporations created by the superior courts; and from all judgments or orders sustaining a motion to dismiss a caveat to the probate of a will.

4. Review of orders and judgments with respect to motions for summary judgment shall be governed by Section 56(h), as amended, of the Georgia Civil Practice Act [§ 81A-156(h)].

(b) Where an appeal is taken under any provision of paragraph (a) above, all judgments, rulings or orders rendered in the case which are raised on appeal, and which may affect the proceedings below, shall be reviewed and determined by the appellate court, without regard to the appealability of such judgment, ruling or order standing alone, and without regard to whether the judgment, ruling or order appealed from was final, or was appealable by some other express provision of law contained in paragraph (a) above, or elsewhere. For purposes of review by the appellate court, one or more judgments, rulings or orders by the trial court held to be erroneous on appeal shall not be deemed to have rendered all subsequent proceedings nugatory, but the appellate court shall in all cases review all judgments, rulings or orders raised on appeal which

may affect the proceedings below, and which were rendered subsequent to the first judgment, ruling or order held erroneous. Nothing in this paragraph shall require the appellate court to pass upon questions which are rendered moot.

(Acts 1965, p. 18; 1968, pp. 1072, 1073.)

Part III. In the Supreme Court or Court of Appeals

XVIII

CHAPTER 6-16. HEARING AND DECISIONS

6-1601. (6197) **Hearing at first term; decisions; continuances.**—The appellate court shall proceed to hear at the first term (unless prevented by providential cause) all cases properly docketed, and with the records made up ready for a hearing. The court shall decide all questions presented in the record of each case carried up to it for review. No continuance shall be allowed except for providential cause. (Act 1845, Cobb, 448. Acts 1872, p. 54.)

APPENDIX K

In the Superior Court for the County of Brooks
State of Georgia

Jim Brasington, et als., Plaintiffs,		
vs.		Civil Action No. 2505.
A. J. Kennedy, et als., Defendants.		

Interlocutory Decree

The above styled matter came on for a hearing before the Court on November 15, 1972, at the time provided by the Court. Legal counsel for the Plaintiffs, legal counsel for the Revenue Commissioner for the State of Georgia, John A. Blackmon, one of the Defendants, and legal counsel for the Board of Tax Assessors, Board of Commissioners and Tax Commissioner of Brooks County, Georgia, all of the other defendants, were present in court consenting to the Court proceeding with a hearing on said matter.

The Motion to Dismiss of the Defendants filed in said matter was heard first by the Court and after argument of counsel the Motion to Dismiss was overruled on all of the grounds thereof. On a consideration of that part of the motion to dismiss based on the failure to state a claim upon which relief can be granted matters outside the pleadings were excluded by the Court.

Legal counsel for all parties before and during the course of the hearing entered into and agreed upon certain admissions and stipulations of fact as the same appear in the record. All pleadings and affidavits and responses filed in the matter were agreed by all legal counsel to be a part of the evidence for consideration by the Court.

The Court upon a consideration of all the evidence, argument of counsel, and the law, makes the following Findings of Fact, Conclusions of Law and Order of the Court, to-wit:

FINDINGS OF FACT

1

Petitioners are citizens and taxpayers of Brooks County, Georgia, owning personal property and owning real property located outside of the limits of municipal corporations in Brooks County.

2

Defendant, John A. Blackmon, is the Revenue Commissioner of the State of Georgia. Defendant, C. E. Dodd, is the Tax Commissioner of Brooks County, Georgia, and performs all of the duties of a Tax Receiver and a Tax Collector. Defendant, A. J. Kennedy is the Chairman and a member of the Board of Tax Assessors of Brooks County, Georgia, and C. H. Kennedy, Paul Williams, Manor Folsom and Theo Murray are the other members thereof. Defendant, T. F. Nichols, is the Chairman and a member of the Board of Commissioners of Brooks County, Georgia, and C. C. Ramsey, E. M. Simpson, Harold Cooper and Floyd McAllister are the other members thereof.

3

Petitioners timely filed their individual tax returns for the year 1972 with the Tax Commissioner of Brooks County, Georgia.

4

Petitioners' 1972 tax returns along with the returns of all other Brooks County taxpayers and any returns made by the Tax Commissioner for defaulting taxpayers were turned over to the Board of Tax Assessors of Brooks County, Georgia.

5

The Board of Tax Assessors of Brooks County, Georgia, examined all such returns turned over to them, including Petitioners' returns, for the year 1972. The Board diligently investigated and inquired into the property owned in the County for the purpose of ascertaining what property was subject to taxation and to require its proper return. If in the opinion of the Board a taxpayer omitted property or failed to return property at a just and fair valuation or the valuations as between individual taxpayers were not fairly and justly equalized, the Board made such corrections, changes or equalizations as it determined should be made in the performance of their duties. When any corrections, changes or equalizations were made by the Board, written notice to the taxpayer involved was mailed to such taxpayer in the manner and containing the information required by law.

6

The Board of Tax Assessors made no changes, corrections, additions or equalizations on the tax returns for 1972 of Petitioners and no written notice was mailed to Petitioners.

7

Upon completion of its work, the Board of Tax Assessors returned the individual tax returns to the Tax Commissioner of Brooks County with their revisions and assessments.

8

The Tax Commissioner of Brooks County completed a digest for Brooks County from said assessments and returns. The Board of Commissioners of Brooks County adopted a 1972 millage rate based on said digest. The Tax Commissioner submitted one copy of said completed digest

and a copy of the millage rate resolution to the Revenue Commissioner of the State of Georgia, John A. Blackmon, sometime in the month of August, 1972. Said Revenue Commissioner received said digest and resolution.

9

The Revenue Commissioner of the State of Georgia examined the said digest and determined that said digest did not comply with the requirement that all property be assessed at 40% of fair market value. The said Revenue Commissioner by letter dated September 1, 1972, to A. J. Kennedy, Chairman, Board of Tax Assessors, Brooks County (Exhibit B, Defenses and Answer of John A. Blackmon), advised that he was returning the 1972 digest pursuant to Georgia Laws 1972, p. 174, §1, Subsection (c), in order that you may make adjustments in the valuations of property so as to insure that the values are reasonably equalized among taxpayers and assessed at 40% of fair market value.

10

The Brooks County digest was returned to the State Revenue Commissioner on September 6, 1972, and on September 22, 1972, the State Revenue Commissioner issued his Order Regarding County Tax Digest to the Chairman, Board of Tax Assessors, Chairman, Board of County Commissioners, Brooks County. (Exhibit II, pages 1 and 2 original Petition). The order was transmitted by mail to said chairmen and to the Tax Commissioner of Brooks County. Neither the Board of Tax Assessors, the Board of County Commissioners nor the Tax Commissioner entered any appeal from said order.

11

The said Order of the Revenue Commissioner is referred to. In part the same "ordered that the property in Column

17 of the Brooks County digest be raised by a ratio of 1.37 (an increase of 37 per cent) and that the personal property, except bank shares (Column 20) and motor vehicles, on the Brooks County digest be raised by a ratio of 1.13 (an increase of 13 per cent) to achieve a digest of 40% of fair market value, as required by Georgia law. . . . (and) that the County Board of Tax Assessors . . . take such action as is required to effect the adjustments hereinabove ordered, as required by Georgia law . . .".

12

The State Revenue Commissioner in reaching his decision that all types or classes of property in the 1972 Brooks County digest were not assessed at 40% of fair market value utilized the State Auditor's Ratio Study for 1971, prepared pursuant to Georgia Laws 1970, p. 542, as amended, together with information from field agents in the State Revenue Department. (Exhibit C, Defenses and Answer of John A. Blackmon.)

13

The Board of Tax Assessors is in the process of performing and intends to perform the Order of the State Revenue Commissioner by raising by a ratio of 1.37 the property in Column 17 of the Brooks County digest and by a ratio of 1.13 the personal property, except bank shares and motor vehicles, on the Brooks County digest. Column 17 property is real property lying outside the limits of incorporated municipalities in Brooks County. The Board of Tax Assessors does not intend to make any other increases in any other property.

14

The Board of Commissioners of Brooks County intend and will lower the millage rate heretofore declared to a

rate producing approximately the same gross revenue as the rate applied to the Brooks County digest originally submitted to the State Revenue Commissioner.

15

A raise in the Column 17 property of the submitted digest by a ratio of 1.37 will increase the individual valuations of the individual real property of the individual petitioners by 37% of the value at which the said property was returned by the petitioners, assessed by the Board of Tax Assessors, and entered in the digest submitted by the Tax Commissioner.

16

A raise in the personal property, exclusive of bank shares (Column 20) and motor vehicles, by a ratio of 1.13 will increase the individual valuations of the individual personal property of the individual petitioners by 13% of the value at which the said property was returned by the petitioners, assessed by the Board of Tax Assessors, and entered in the digest submitted by the Tax Commissioner.

17

The amount of tax which would have been assessed on the real property of petitioners in the digest as submitted first to the Revenue Commissioner will be increased in amount by any such ratio increases in valuations of real property of the petitioners on the digest and by decrease in millage.

18

The amount of tax which would have been assessed on the real property of taxpayers owning real property in municipal limits in Brooks County, Georgia, and owning real property assessed on returns to the Revenue Commissioner will be decreased in amount by any such ratio increases in valuations of the real property of petitioners on the digest and decrease in millage.

19

Column 17 property, Column 19 property, Column 20 property, Column 21 property, Column 22 property, Column 23 property, Column 25 property and Column 26 property on the digest of Brooks County and all property required to be returned for County ad valorem taxation to the State Revenue Commissioner are all one class of subject of property under Article VII, Section I, Paragraph III (Georgia Code Ann., 1971 Pocket Part, Section 2-5403) of the 1945 Georgia Constitution, as amended, to-wit, tangible property. The identification of column number property is shown on Exhibit A of Defenses and Answer of John A. Blackmon, State Revenue Commissioner. No notice or right to arbitrate to petitioners or others similarly situated of such increase in valuations of the property of petitioners caused by raising the same by the use of the ratios as aforesaid will be or is intended to be given petitioners or others similarly situated by the Board of Tax Assessors, or the Board of Commissioners, or the Tax Commissioner, or the State Revenue Commissioner.

CONCLUSIONS OF LAW

A. Georgia Laws, Acts 1966, P. 45, as amended by Acts 1970, P. 91, and Acts 1970, P. 642, and Acts 1972, P. 174 (Georgia Code Ann., § 92-7001 and 92-7002) make no provision for notice and right to arbitrate or notice and opportunity to be heard at any stage of the proceedings to any taxpayer whose tangible property has been increased in value by order of the State Revenue Commissioner, and specifically makes no provision for notice and right to arbitrate or notice and opportunity to be heard at any stage of the proceedings to petitioners and those similiarly situated whose property valuations are in the process of being increased for the first time and will be increased for the first time as a result of the order of the State Revenue Commissioner.

B. The notice provided under said Acts to the County Board of Tax Assessors and the governing authority of the County of the order or action of the State Revenue Commissioner is not notice to an individual taxpayer of an increase in the tax value of his property, and specifically is not notice to petitioners and those similarly situated of an increase in the valuation of the property of petitioners and those similarly situated for the first time as a result of the order of the State Revenue Commissioner.

C. Georgia Laws, Acts 1943, P. 204 and Acts 1937-38, Extraordinary Session, P. 77, as amended by Acts 1943, P. 204 (Georgia Code Ann. § 92-8426.4 and 92-8446) do not provide for an appeal to the Superior Court by an individual taxpayer of the order of the Revenue Commissioner issued to the Board of Tax Assessors and Board of Commissioners of Brooks County, Georgia.

D. Where an increase in value of the tangible property of a taxpayer as timely returned for taxation by a taxpayer to the Tax Commissioner occurs for the first time by order of the State Revenue Commissioner under Georgia Laws, Acts 1966, P. 45, as amended by Acts 1970, P. 91, and Acts 1970, P. 642, and Acts 1972, P. 174 (Georgia Code Ann., § 92-7001 and 92-7002), neither said statutes nor the Georgia Laws, Acts 1971, P. 33 (Georgia Code Ann. § 92-6911), Georgia Laws, Acts 1913, P. 123, as amended by Acts 1918, P. 230, Acts 1931, P. 7, Acts 1958, P. 387, and Acts 1969, P. 942 (Georgia Code Ann., § 92-6912), nor Georgia Laws, Acts 1943, P. 204, and Acts 1937-38 Extraordinary Session, P. 77, as amended by Acts 1943, P. 204 (Georgia Code Ann. § 92-8426.4 and 92-8446), nor any other statute of the State of Georgia which has come to the attention of the Court, provides for any notice, right to arbitrate, right to a hearing thereon, or right to appeal therefrom to such taxpayer, and specifically to petitioners and those similarly situated.

E. Where an increase in value of the tangible property of a taxpayer as timely returned for taxation by a taxpayer

to the Tax Commissioner occurs for the first time by action of the Board of Tax Assessors, notice and right to arbitrate is afforded such taxpayer. (Georgia Code Ann. § 92-6911 and 92-6912. For specific Georgia Law reference of said sections see D. aforesaid.

F. No individual taxpayer has any right to notice, right to arbitrate, or right to be heard or appeal where a taxpayer's tangible property is increased in value by an order of the State Revenue Commissioner or by an order of the Board of Tax Assessors as the provisions for arbitration specifically provide that the arbitrator's decision shall be final "except as far as the same may be affected by the findings and orders of the State Revenue Commissioner" even though appeal from the arbitrator's decision to the Superior Court is provided. (Georgia Code Ann. § 92-6912, and for the Georgia Law specific reference see D. aforesaid.)

G. Petitioners and those similarly situated are not afforded due process of law under Georgia Laws, Acts 1966, P. 45, as amended by Acts 1970, P. 91, Acts 1970, P. 642 and Acts 1972, P. 174 (Georgia Code Ann., § 92-7001 and 92-7002); or under Georgia Code Ann., § 92-6911 and 92-6912 (the specific reference to Georgia Laws for said sections being set forth in D. aforesaid.)

H. Petitioners and those similarly situated are not afforded equal protection of the law under the same statutes set forth in G. aforesaid and under the statutes set forth above as constituting Georgia Code Ann. § 92-8426.4 and 92-8446 (refer to C. aforesaid for the specific Georgia Laws reference).

ORDER OF THE COURT

It is, therefore, Ordered, Adjudged and Decreed as follows:

I

The Motion to Dismiss by the Defendants is overruled on all grounds.

II

Georgia Laws, Acts 1966, as amended by Acts 1970, P. 91, and Acts 1970, P. 642, and Acts 1972, P. 174, is unconstitutional as to Petitioners and those similarly situated for want of due process of law and equal protection of the law under the Fifth Amendment and the Fourteenth Amendment to the Constitution of the United States of America and under Article I, Section I, Paragraph III, and Article I, Section I, Paragraph II, of the Constitution of the State of Georgia of 1945, insofar as said Acts authorize the Revenue Commissioner of the State of Georgia to increase the valuation of the tangible property of an individual taxpayer timely filing a return to the Tax Commissioner or Tax Receiver of the County where the property of the taxpayer is located without notice thereof and an opportunity to be heard on the question of the increase in valuation thereof, whether such increase is ordered by a fixed per centum or otherwise.

III

The Order of the Revenue Commissioner of the State of Georgia issued to the Chairman, Board of Tax Assessors, and Chairman, Board of County Commissioners, Brooks County, Georgia, dated September 22, 1972, a copy of which is attached to the Petition as Exhibit II, P. 1 and P. 2, is hereby declared null and void insofar as the same orders that the property in Column 17 of the Brooks County digest be raised by a ratio of 1.37 (an increase of 37 per cent) and that the personal property, except bank shares (Column 20) and motor vehicles, on the Brooks County digest be raised by a ratio of 1.13 (an increase of 13 per cent).

IV

The Revenue Commissioner of the State of Georgia, the Board of Tax Assessors of Brooks County, Georgia, the Board of County Commissioners of Brooks County, Georgia, and the Tax Commissioner of Brooks County, Georgia, are temporarily enjoined from enforcing that portion of the Order of the said Revenue Commissioner hereinabove declared null and void and from taking any action to effect the adjustments ordered by such portion of the null and void order, and temporarily enjoined from committing the acts denying to petitioners and those similarly situated due process of the law and equal protection of the law as aforesaid.

V

Until the further order of the Court, the Tax Commissioner of Brooks County, Georgia, is authorized to accept from any taxpayer owning property in Brooks County, Georgia, taxable in Brooks County, Georgia, any sum or sums of money offered to be paid voluntarily by said taxpayer to the Tax Commissioner on the taxpayer's liability for taxes due to Brooks County, Georgia, for the year 1972 and to issue to such taxpayer a receipt for such voluntary payment. Any taxpayer voluntarily making payments to the Tax Commissioner shall be refunded any sums paid in excess of its tax liability as the same may be finally determined and shall be liable for any deficiencies in his tax liability as the same may be finally determined.

So Ordered this 22nd day of November, 1972.

/s/ Marcus B. Calhoun
Judge, Superior Court
Brooks County, Georgia

APPENDIX L

In the Superior Court of Fayette County
State of Georgia

Fred Green, Street Kornegy, Howard Perdue, W. W. Vining, et al., on Behalf of Themselves and All Others Similarly Situated,
Plaintiffs,

vs.

Douglas H. Stanley, Kenneth Spaller, J. C. Hanchey, as Tax Assessors of Fayette County, and Mrs. Charlotte Griggs, as Tax Commissioner of Fayette County, and Marvin Adams, Ruben Knowles, and Theriol Padgett, as Commissioners of Roads and Revenues of Fayette County,
Defendants.

Civil Action,
File No. 3982.

Order on Hearing Seeking Interlocutory Injunction

Plaintiffs filed the within complaint seeking injunctive relief against the enforcements of certain tax assessments made by defendants under an order of the State Revenue Commissioner.

This matter is before this court upon a stipulation of facts made by the parties in open court and read into the record by their respective attorneys. A copy of said stipulated facts is attached hereto, hereby incorporated herein, and, by reference, hereby made a part hereof.

In seeking to reach a determination of the question involved herein, this court has examined the existing statu-

tory procedures governing the conduct of the various tax officials from the original review of tax returns by the local tax assessors through judicial review available to the taxpayer, when and where it exist, and has given consideration to the decisions of the appellate courts applicable thereto, as follows:

Under Georgia law, within ten days after April 1 the tax receiver is required to send the tax returns for the current year to the tax assessors. (Acts 1913, p. 123; 1945, p. 423) The Board of Tax Assessors meets and reviews the returns. If the Board finds that a taxpayer has omitted property from his return or has failed to return property at a fair and just valuation, then the Board corrects the return and assesses and fixes the fair and just valuation of the property. It is the duty of the Board to see that all taxable property within the county is assessed and returned at its just and fair valuation and that valuations as between the individual taxpayers are fairly and justly equalized so that each taxpayer shall pay as near as may be only his proportionte share of taxes. Written notice shall be given to the taxpayer within a period of five days when any corrections, changes, or equalizations shall have been made by the Board. (Acts 1937, pp. 517, 519; 1970, pp. 580, 581; 1971, p. 33)

A dissatisfied resident taxpayer then has ten days (nonresident, 20 days) from the giving of said notice to give notice to the Board that he demands an arbitration. The findings of a majority of arbitrators shall be final, except as far as the same may be affected by the findings and orders of the State Revenue Commissioner. Either the taxpayer or the Board of Tax Assessors may appeal the arbitrators decision to the Superior Court if the difference between the valuation of the Board of Tax Assessors and the valuation of the Arbitrators exceeds the sum of One Thousand ($1,000.00) Dollars. The appeal is to be filed within thirty days, and is a de novo investigation. (Acts

1913, pp. 123, 127; 1918, pp. 230, 231; 1931, pp. 7, 35; 150 Ga. 691, 697; 143 Ga. 368, 371; 254 U. S. 64, 70; Acts 1958, p. 387; 1969, p. 942.)

The Board shall complete its revision and assessment of the returns by June 1 of each year, and the tax receiver shall immediately forward one copy of the complete digest to the State Revenue Commissioner for examination and approval. (Acts 1913, pp. 128, 129; 1931, pp. 7, 35; 1945, p. 251.)

(In this State, tangible property is subject to an ad valorem tax, that is, to a tax of a fixed proportion of the value of the property to be charged. See Acts 1909, p. 75; 1968, p. 358; Acts 1851-2, p. 291; 1909, p. 37; 1968, pp. 358, 359.)

Upon receipt of the complete digest from a county, it becomes the duty of the State Revenue Commissioner to examine the same and to compare it with digest from the other counties of the State for the purpose of ascertaining whether the valuation of the various classes of property as made in the respective counties for taxation purposes is reasonably uniform as between the various counties and as between the various classes within a county, and to ascertain compliance with Article 7, Section 1, Paragraph 3 of the Constitution (of 1945, Sec. 2-5403). If the Commissioner finds that the taxable values (that is, 40% of fair market value) in one county are not reasonably uniform with the values fixed upon the same classes of property in other counties, then, after investigation and comparison, said Commissioner has the authority to adjust and equalize the same by adding a fixed per centum to the county valuation of any class of property in the county.

The Commissioner may then, if he deems appropriate, return the digest to the local board of tax assessors to make adjustments in the valuation of any class or classes of property in the tax digest of the county involved. The Com-

missioner also has the duty of adjusting the millage levy, if necessary, so as to ensure that the adjusted county digest will produce an amount of revenue reasonably equivalent to that amount of revenue which would have been produced had no adjustments been made to the county valuations. After making the authorized adjustments, the Commission notifies the county board of tax assessors and the governing authority of the county affected of the necessary adjustments and returns the tax digest to the county **for correction accordingly.**

Upon receipt of the notice from the Commissioner, **the county board of tax assessors and the governing authority of the county** shall take such action as required to effect the adjustments made by the Commissioner to the county digest and county millage levy.

If the board of tax assessors or county authorities are dissatisfied with the directions given them by the Commissioner, they have recourse to obtain a court review of the Commissioner's decision. (Acts 1943, pp. 204, 206; Acts 1937-38, Extra Sess. pp. 77, 100; 1943, pp. 204, 206, 208.)

The cases of **Vestal v. Edwards, 143 Ga. 368, and Barnes v. Watson, 148 Ga. 822,** involved situations where no duty of the State Tax Commissioner had been exercised and no decision was made in either case relative to that office even though there was a contention made in each case that the Act then under consideration contained no provision for notice to a taxpayer in the event of an increase of the valuation of property by order of the Commissioner and was, consequently, unconstitutional.

In the present case, however, the State Revenue Commissioner **has** acted and the local tax assessors have, in turn, acted to effect the adjustments made by the State Revenue Commissioner, and did so without giving the taxpayers notice of any kind.

The Fourteenth Amendment to the United States Constitution provides that no state shall deprive any person of life, liberty or property without due process of law.

The Constitution of the State of Georgia provides, in Article I, Section I, Paragraph III (Ga. Code, Section 2-103) that "no person shall be deprived of life, liberty or property except by due process of law."

Vestal v. Edwards states that it has been held that in the matter of taxation due process of law does not require a judicial procedure. It is further recognized therein, however, that due process does require some type of notice to the taxpayer and the right to be heard on the assessment before final judgment. "Where, before the assessment becomes final opportunity is given to appear and make proofs before a board of Commissioners, or a board of equalization, having authority to hear complaints and proofs and make correction of the assessment, the opportunity is sufficient."

The due process clause does not guarantee to the citizen of the State any particular form or method of State procedure. Its requirements are satisfied if he has reasonable notice and opportunity to be heard, and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it. **Hancock v. Board of Tax Assessors of Harris County, et al., 226 Ga. 570,** and citations.

Considering the requirements of due process in the light of **Vestal v. Edwards,** it is material to determine when an assessment becomes final.

Code Section 92-7401 directs that executions for nonpayment of taxes, against persons who are not required to pay to the State Treasurer, shall be issued by the tax collectors of their respective counties as soon as the last day for payment shall have arrived, and shall be directed to all and singular the sheriffs and constables of this State.

Code Section 92-5102 (Acts 1884-85, p. 66), provides that: "The tax collectors shall keep an execution docket, and on the 20th day of December in each year issue executions against each delinquent or defaulting taxpayer in their respective counties, unless further time is allowed as provided by law, and enter the names of such delinquent or defaulting taxpayers on said docket, together with an itemized statement of the taxes covered by such execution."

"Under the Civil Code of 1910, Sec. 1229, State and County taxes for a given year are in default if not paid by December 20 of that year." **Ford v. Cunningham et al., 174 Ga. 171 (3).**

Under the authority hereinabove cited, if a taxpayer does not respond to the demand of the governing authority and pay his taxes by December 20th of a given year, judgment is entered against him summarily and an execution is entered and placed upon the execution docket. No further opportunity is afforded to the taxpayer to be heard between the time he is notified as to the amount of taxes claimed to be due by him and the time a judgment is entered against him and execution issues. His opportunity to be heard, after notice, is provided solely under the provisions of Acts 1937, pp. 517, 519; 1970, pp. 580, 581; 1971, p. 33. If the taxpayer had received the notice therein provided for, and had thereby been accorded his statutory remedy, then the requirement of due process has been satisfied, and the taxpayer would have no right to require a second opportunity to complain before final judgment is entered against him by the taxing authorities.

Petitioners, in paragraph seven (7) of their petition, complain of lack of notice; in paragraph eleven (11) and twelve (12) they complain that the laws requiring that the property be assessed at its fair and just valuation have been violated.

While this court could find some fault with the manner in which the complaint is drawn and the inconsistency (for

the purposes of this action) of the allegations and prayers of said complaint, still, it is apparent that the gist of the action, insofar as constitutional grounds are concerned, is the lack of due process resulting from failure to give notice. This point is sufficiently raised, and a decision thereon cannot be avoided by basing a decision herein on any collateral matter.

Want of due process resulting from lack of notice would result in an illegal and void levy. It would not necessarily follow that the levy was excessive. That question would be reached and determined is a proper proceeding held pursuant to the giving of the required notice.

Defendants contend that petitioners have no standing to be heard because they have not paid, or offered to pay, any taxes admitted to be due. With this contention this court cannot agree. This action was filed before December 20, the date upon which the taxes are due and payable.

A taxpayer seeking relief from an excessive tax levy must pay, or offer to pay, any taxes admitted to be due, in order to obtain equitable relief, but a taxpayer asserting that assessments are illegal and void, who brings his action prior to the date the taxes are due and payable, need not make a tender of any taxes in order to obtain equitable relief against the void assessments. **Register et al. v. Langdale, Commissioner, et al., 226 Ga. 82 (1).**

The case of **Gilmore v. Curry, 225 Ga. 483,** involved a situation where a board of tax assessors raised the valuation of personal property and failed to give the taxpayer notice of the raise in assessed value within the period of five days from the date of the revaluation. It was held that the evidence demanded a finding that the tax fi. fa. based upon the increased valuation of the taxpayer's personal property was proceeding illegally.

Richards, Sheriff, et al. v. Zentner, 176 Ga. 222, recognized the right of the taxpayer to the notice and to have

an opportunity to be heard . . . and if such notice has not been given and opportunity to be heard given, the enforcement of a tax fi. fa. based upon the increased valuation may be enjoined by a court of equity.

See also, **Register v. Langdale, 226 Ga. 82 (3)**, recognizing the right to notice.

It is basic to a decision in present case to recognize that the increasing of the assessments was the work of the Fayette County Board of Tax Assessors. While it is true that the said Board was **ordered** to increase the assessments by the State Revenue Commissioner, still, under the law involved, "Upon receipt of the notice from the Commissioner, the county board of tax assessors and the governing authority of the county shall take such action as required to effect the adjustments made by the Commissioner to the county digest and county millage levy." **Acts 1943, 204, 206**, *supra*.

Following the directive of the State Revenue Commissioner, the local board of tax assessors made **corrections, changes, or equalizations** in the individual tax returns of Fayette County taxpayers, and the digest was then completed and again forwarded to the State Revenue Commissioner without any notice whatsoever to the taxpayers, and without any opportunity to be heard on the increased assessments.

The "corrections, changes or equalizations" made having been made by the local board, albeit on order of the State Revenue Commissioner, compliance with the requirement of the law as to the giving notice to the taxpayer whose return had been changed was mandatory, and failure to so comply with the statute and give the required notice deprives the taxpayer involved of due process of law and any assessment so made is illegal and subject to being enjoined by a court of equity.

By reason of the foregoing, it is the finding of this court that the defendants herein named are proceeding illegally in said matter, and it is hereby ordered that they be, and are hereby, temporarily enjoined from proceeding with any assessment contained in the current (1972) Fayette County tax digest which has been corrected, changed or equalized by the Fayette County Board of Tax Assessors under directions of The State Revenue Commissioner.

This 11th day of December, 1972.

/s/ Andrew J Whalen, Jr.
as Judge, Superior Courts
Griffin Judicial Circuit

In the Superior Court for the
County of Fayette, State of Georgia

Fred Green, Street Kornegay, Howard Perdue, W. W. Vining, et al., on Behalf of Themselves and All Others Similarly situated Plaintiffs vs. Douglas H. Stanley, Kenneth Spaller and J. C. Hanchey, as Tax Assessors of Fayette County; Mrs. Charlotte Griggs, as Tax Commissioner of Fayette County and Marvin Adams, Ruben Knowles and Theriol Padgett, Commissioners of Fayette County Defendants	Civil Action, File No. 3982

Order Modifying Temporary Injunction

This Court's order entered December 11, 1972, temporarily enjoining the defendants from proceeding with certain

assessments for ad valorem tax purposes is hereby amended and modified to permit the receipt by the Fayette County Tax Commissioner of voluntary tax payments based on such assessments, under the conditions hereinafter set forth.

The tax bill of any taxpayer making a voluntary payment hereunder shall be re-computed by the defendant Tax Commissioner after final determination of this cause on basis of such lawful assessment as may be found to apply. The defendants shall then promptly take such measures as required to refund any overpayment. Promptly after notification of any underpayment, such taxpayer shall pay any deficiency found upon re-computation.

Said Tax Commissioner is further authorized pending final disposition hereof to accept partial tax payments of 1972 taxes subject to the foregoing conditions as to refund of overpayments and payment of deficiencies; which conditions shall be deemed hereafter to apply also to all payments of affected 1972 taxes made prior to December 11, 1972, by any taxpayer.

This 14th day of December, 1972.

/s/ Andrew J. Whalen, Jr.
Judge
Superior Court Griffin
Judicial Circuit

Prepared and signed in behalf of counsel for both parties, with the express consent and authorization of adverse counsel by:

/s/ Charles T. Ballard
Attorney for Defendants

Filed in the office of Clerk of Superior Court Fayette County, Georgia at 4:00 O'clock PM the 14 day of Dec., 1972.

W. A. Ballard
Clerk

Certificate of Service

This is to certify that I have this day served counsel for the opposing party, in the foregoing matter with a copy of this order by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 14 day of December, 1972.

Charles T. Ballard
Attorney for Defendants

(Not of record in the Supreme Court of Georgia.)

APPENDIX M

Section F of Brief of Petitioners to the Supreme Court of Georgia

Constitutionality of Methods

The following argument and citation of authorities will treat enumeration of errors 24, 25, 26, 27, 32, and 37 together inasmuch as they involve the same subject matter, i.e., the alleged unconstitutionality of the effort and method of equalization of assessments employed by local tax officials in the case at bar.

In paragraph 63 of Count II of appellants' complaint (R-78) the following allegation appears, to-wit:

> "Plaintiffs and others similarly situated are citizens, residents and taxpayers of Macon County, Georgia, and bring this action for injunctive relief attacking the constitutionality of the method employed by local taxing officials while purportedly attempting to equalize taxes between the various taxpayers in said county, which method consisted of merely adding arbitrary and discriminatory percentage increases of either 54% or 8% on ad valorem tax assessments on all parcels of real property located in said county."

Appellants respectfully submit that they have legal and equitable standing to maintain this action for injunctive and other relief. Prevention of the alleged unlawful and unconstitutional activities of the local taxing officials is essentially injunctive in character, and the relief sought was and is the only remedy available to appellants and all others similarly situated. Appellants contend (as set forth in subsection G herein below) that arbitration is not an adequate remedy at law for appellants and their class.

As alleged in paragraph 65 of Count II of said complaint (R-79), "the central question is one of public right and the object of the complaint being to procure the enforcement of a public duty . . .".

In **Moore, et al. v. Robinson**, 206 Ga. 27, at page 36, this Court, citing other cases held as follows:

> "The right to practice chiropractic in this State is, like the right to practice any other profession, a valuable right, which is entitled to protection under the Constitution and laws of this State. **Hughes v. State Board of Medical Examiners**, 162 Ga. 246, . . . 'Where the question is one of public right, and the object is to procure enforcement of a public duty, no legal or special interest need be shown, but it shall be sufficient that plaintiff is interested in having the laws executed and the duty in question enforced.' Code Sec. 64-104; **Board of Commissioners of Manchester v. Montgomery**, 170 Ga. 361, . . . And we do not think that it would be seriously contended by anyone that the members of the Board of Chiropractic Examiners were not under a duty to the public generally, including, of course, the members of that profession, to administer the laws regulating the practice of chiropractic, as they have been enacted by the selfsame authority which created the board itself. **The principle is thoroughly established that injunction will be and is the appropriate remedy to prevent the commission of a wrongful act by an officer or agent of this State, even when acting under color of his office but without lawful authority, and beyond the scope of his official power.**" (Emphasis ours.)

By the same token appellants do not think that it would be seriously contended by anyone that local taxing officials were not, and are not, under a duty to the public generally, including appellants who are citizens, residents, and

taxpayers of said county, to justly and fairly assess all property subject to taxation at its fair market value so that forty percent (40%) of said fair market value will be used for ad valorem tax purposes and that appellants have a public right to see that said duty is not carried out in an unlawful and unconstitutional manner.

Appellants contend that under the guise of equalization the local taxing officials have implemented a plan which is not based upon an appraisal or fair valuation, but is rather a plan which calls for arbitrary and discriminatory increases in real property assessments, of either 54% or 8% without any consideration for uniformity and without respect for the true value or to the equalization of values among landowners, all of which violates the equal protection clause and the due process clause of the 14th Amendment to the United States Constitution, and Article VII, Section I, Paragraph 3, of the Constitution of the State of Georgia calling for uniformity of taxation.

Several of the local tax assessors boldly testified in effect that their method of assessment increases was fair and reasonable, as indicated by the testimony of appellee Mr. Walter Forsling (T-143), to-wit:

> "Q. Why did you make these specific changes?
>
> "A. Because we thought that was reasonable; we try to be reasonable in all things."

While the Board of Tax Assessors publicly claims to have been fair and reasonable in the method of assessment increases employed, appellants contend that appellees nevertheless realize the true inequities and probable illegality of that method. The general attitude of local tax officials is clearly reflected in the following testimony of Mr. Forsling (T-184), to-wit:

> "Q. Mr. Forsling, I call your attention to the page of the ratio study with the R's, S's, and T's as to

surnames in the left-hand column, and the particular property in the left hand column listed as the Jim Taylor/Cathryn Taylor property; is that not indicated as a City of Montezuma parcel?

"A. I'm not familiar with that piece of property.

"Q. Well, is it indicated on the ratio study as a Montezuma parcel?

"A. City of Montezuma; yes, sir.

"Q. Doesn't it already have a 40.13% ratio?

"A. That is correct.

"Q. Well, that parcel was raised by 8%, was it not?

"A. That's correct.

"Q. Now, looking back at the same line, that's not an appraisal, is it, Mr. Forsling?

"A. As a sale.

"Q. Well, how does the Board feel it's justified raising that particular property by 8% when the ratio study itself shows that property owner is already paying at better,—a little better than 40%?

"A. This party has a right to arbitrate, and we haven't heard a word from that particular party.

"Q. Is it the rule of the Board of Tax Assessors of Macon County to assess property at better than 40% and leave it to the aggrieved taxpayer to ask for arbitration?

"A. When you have 5300 parcels it's a job to get them all down right; we try to do our best."

Obviously, Mr. Forsling's answers presuppose that arbitration was available as a remedy to any aggrieved taxpayer, with which presupposition appellants expressly disagree. Not only was arbitration not an adequate, effective remedy (as will be argued later in this brief) but no taxpayer ever had effective opportunity to demand arbitration due to the many inadequacies in the purported notices sent to all taxpayers.

Mr. Bruce Hill testified as follows:

"Q. Now, on the ratio study, Mr. Hill, I believe it's on the last page, page 7; now this ratio study indicates, does it not, that Mrs. Webb,—that piece of property was already returned for taxes for more than the legally required 40% in 1971 and 1970?

"A. This is an appraisal and they appraised it, of course, at a 42.40%; yes, sir." (T-92)

"Q. Isn't it true as to Mrs. Webb's property, this 54% increase is going to be quite unjust as to that particular individual and that particular parcel of land, inasmuch as she will be paying over 60% of the true market value of her property, won't she, Mr. Hill?

"A. Looking at the appraisal and judging from the appraisal and the ratio that was in the study a 54% increase would probably throw her well above the 40%." (T-93)

There are numerous other examples shown in the tax ratio study (T-272-279) reflective of the true attitude of local tax officials and the resulting unfairness and illegality of their actions in the case sub judice.

It should be noted here that the tax ratio study (T-272-279) reflects numerous percentage ratios so low (such as 21.00, 21.69, 20.62, 19.66, 14.15, 12.93, 18.33, and others) in many instances that a percentage increase of either 8% or 54% as ordered by the local board would not be sufficient to bring said parcels up to the required 40%.

This simply magnifies the inherent unfairness of the method of assessment increases employed by the local tax officials, and can by no stretch of the imagination be justified under the guise of the label of "equalization".

It should also be noted at this point that as material hereto, the trial court made the following findings of fact, inter alia (R-83):

"2. The Board of Tax Assessors of Macon County did in fact increase for the year 1972 the assessments

of almost all of the rural real property in Macon County by a percentage of 54%, with the exception of most residences constructed since 1964.

"3. The Board of Tax Assessors of Macon County increased the assessments of almost all urban real property in Macon County by a percentage of 8%."

How can appellees justify their actions as a plan of equalization, when, in fact, no bona fide attempt was made to achieve true equalization? Assuming arguendo, that the intention of appellees was to achieve equalization, that fact standing alone does not accomplish equalization, and appellants contend that the efforts of appellees in the case at bar fall far short of the constitutional requirements of equalization.

An interesting case which deals with the problem presented in the case sub judice is **Brooks et al. v. Carter, Tax Collector, et al.**, 216 Ga. 836, wherein this Court approved the method of equalization utilized by local taxing officials in Miller County.

The Court held that the evidence submitted authorized the trial judge to find that, among other things, for the 1960 tax year, 2,094 persons made tax returns to the county's tax receiver and, after an examination of them, the county's board of tax assessors found that 1,769 of them had voluntarily returned their property at its just and fair value; that the board increased the returns of the remaining 325 so as to equalize them in value with the returns of the 1,769 who had, in the board's opinion, properly valued their property for tax purposes; that of those whose returns were increased by the board, only 12 had contested the board's action by this or other similar litigation, and, as to those 12, the board's increases in value **ranged** from 12% to 176% higher than the values at which they were returned.

This Court ruled that, applying these facts, it could no be said that the trial judge abused his discretion in refus ing to grant a temporary injunction.

Appellants submit that the local taxing officials in **Carte** *supra*, did in fact make a bona fide and constitutional effor at equalizing taxes. There was clearly an attempt to de termine which of the 2,094 taxpayers in Miller County ha already returned their property at its fair market valu and 1,769 returns were systematically eliminated as havin properly returned the properties listed therein at thei fair market values.

Obviously, the board made a concentrated effort to equa ize the remaining 325 returns, in that the 12 complainin taxpayers received a range of increases in assessments fro 12% to 176% higher than the returned values.

In the case at bar, local taxing officials made no effor to determine which of the approximately 3,400 taxpaye had returned their properties at their just and fair marke values, so as to eliminate such properties from increases i assessments; and it is undisputed that many parcels wer already being taxed at, and in excess of, their fair marke values. Instead, the local taxing officials adopted a plan t increase the assessments on all real property in Mac County, Georgia, by percentage increases of either 54 or 8%.

The plan of "equalization" implemented by taxing o ficials in Macon County does not even approach the effor utilized by taxing officials in **Carter**, *supra*, and should b ruled violative of statutory law and also unconstitutiona

For a further case in point, the Court's attention is r spectfully called to **Green v. Calhoun**, 204 Ga. 550.

Also see **Hutchins, et al. v. Howard, et al.**, 211 Ga. 83 wherein this Court held that, as against a general demu rer, the allegations of plaintiffs' amended complaint allegin

an unconstitutional, unlawful, and discriminatory percentage increase of 15% of the valuations of their property by local taxing officials, were sufficient to state a cause of action for the injunctive relief sought.

In headnote 2 of said opinion, this Court stated:

> "The law requires that all real and tangible personal property be assessed at its fair market value, Code Sec. 92-5701, 92-5702. It establishes a scheme of administrative machinery to bring this about. Sec. 92-6901 et seq. The record in the instant case shows that no property was so assessed. It also shows indisputably that it was not assessed uniformly. And we might well say, as did the Supreme Court of the United States in **Green v. L. & I. R. Co.**, 244 U. S. 499, 501, . . ., that 'the duty to assess at full value is not supreme but yields to the duty to avoid discrimination.' "

The method of assessment increases on personal property (T-302) employed by the local tax officials is likewise unfair, inequitable and therefore unconstitutional, in that they are absolutely arbitrary and discriminatory and were employed without regard for the true value thereof or to the equalization of values among such property owners, all of which violates the equal protection clause and the due process clause of the 14th Amendment to the United States Constitution, and Article 7, Section 1, Paragraph 3, of the Constitution of the State of Georgia requiring uniformity of taxation.

In **Hutchins v. Howard**, 211 Ga. 830, this Court said:

> "**Taxation on all real and tangible personal property subject to be taxed is required to be ad valorem—that is, according to value,** and the requirement in the Constitution that the rule of **taxation shall be uniform, means that all kinds of property of the same class** not absolutely exempt **must be taxed alike, by the same**

standard of valuation, equally with other taxable property of the same class, and coextensively with the territory to which it applies, meaning the territory from which the given tax, as a whole, is to be drawn." (Emphasis ours.)

Appellants respectfully contend that the aforesaid percentage increases employed by the Board of Tax Assessors of Macon County, Georgia, both as to real and personal property is illegal and unconstitutional for failing to comply with the required standards of ad valorem taxation.

* * * * * * *

APPENDIX N

"Part One: Statement of the Case". In Supplemental Brief to Supreme Court of Georgia.

B. Issues of Law and Equity

1. Clarification of Appellants' Original Statement of Issues, as to Counts I and II:

(a) Appellants would like to emphasize here that there are two counts in appellants' complaint, as amended, which appellants' original statement of the case perhaps did not make clear:

(b) Appellants consider their entire case to be a class action, the class consisting of all persons who are owners of rural, real and personal property located in Macon County, Georgia, subject to 1972 ad valorem tax assessment increases for state, county, and school taxes, which increases were illegally made by the Board of Tax Assessors of Macon County, at the instigation of the State Revenue Commissioner and his agents (R-5).

(c) Count I seeks to protect said class from the collection of such ad valorem taxes, based on said illegal assessment increases, for the year 1972 and thereafter (R-22-23).

(d) Count I further seeks to have appellees, and their successors in office permanently enjoined in 1973, and thereafter, from assessing said property of said class and from collecting and from implementing the collecting of such ad valorem taxes from said class, "until all parcels of all classes of property, both real and personal, both tangible and intangible, whether owned by public utility companies or not, located in Georgia are:" identified, appraised, assessed at the same rate, and then taxed by the state at the same rate, or millage, regardless of local school needs (R-23).

(e) In Count II appellants seek not only to protect themselves, said class, i.e., owners of rural property in Macon County, by having all appellees, and their successors in office, both temporarily restrained and permanently enjoined from making such illegal increases in ad valorem tax assessments and from implementing the collection of all taxes based on such illegal assessments, but seek to have the methods employed in 1972 in Macon County, Georgia, in increasing said assessments, declared to be violative of both state and federal constitutional provisions for due process of law and equal protection of the law, because such methods were and are both arbitrary and discriminatory (R-79-80, prayers K, L, M, and N).

(f) In Count II appellants seek primarily ". . . to procure the enforcement of a public duty as provided by law," i.e., the duty of local taxing officials to assess all tangible personal and real property located in the county, other than property of the public utilities, at 40% of the fair market value thereof, in a lawful manner, i.e., by methods that comply with pertinent statutes and also are not arbitrary or discriminatory (R-79, paragraph 65).

(g) In Count II appellants need not allege, nor prove, any particular present or future harm to themselves because of the illegal and unconstitutional methods of increasing assessments; appellants, as all citizens do, have a right to see that illegal methods are not used in the performance of a public duty by elected and appointed officials (R-78-79-80).

(h) In effect, in Count II appellants have petitioned the trial court for a writ of mandamus, which would order the Board of Tax Assessors of Macon County to make legal ad valorem tax assessments on all real and personal property, subject to local assessment, for the year 1972 and thereafter, which assessments could not be based on flat percentage increases on various categories of property, which

for convenience of administration just happen to be listed in different columns of the state-approved tax digest form, but which properties are nevertheless of the same class, i.e., tangible, according to the Georgia Constitution, and which percentage increases could neither be made on sub-categories of such columns, but which assessments would have to based on the best information obtainable, which information in most instances, would necessarily consist of professional appraisals of the individual properties. (See Ga. Code Ann., Sec. 92-6913.)

2. **Issues Raised by Briefs of Appellees:**

(a) Inasmuch as the fourteen appellees represented by Mr. Roberts have attempted to inject the issue of estoppel, by suggestion and innuendo, by alluding to a fact extraneous to the transcript and record, i.e., that the six-named appellants have, at least, gone through an arbitration procedure (which appellants contend was and is illegal), the Supreme Court may consider estoppel an issue.

(b) Inasmuch as appellees Blackmon and Davis have attempted to inject the issue of mootness, by alluding to facts extraneous to the transcript and record, i.e., that some compilation of names and numerals has been approved as the 1972 Macon County ad valorem tax digest and that much money has already been collected as taxes, based on said compilation, even, perhaps, money from the six-named appellants, especially in conjunction with the brief of said fourteen appellees, the Supreme Court may consider mootness an issue.

(c) Appellees Blackmon and Davis apparently think there are only three "questions" presented to the court, whereas the other said fourteen appellees seem to think that there are nine "issues of law" presented to the court.

3. **Issues Raised by Brief of Appellants:**

(a) Appellants, however, have previously enumerated twenty-four issues of law and equity, as well as seven issues of fact and eight combined issues of fact, law, and equity, all as set out in appellants' enumeration of errors, all of which thirty-nine issues, and the other necessarily multi-fold and concomitant issues said thirty-nine enumerated issues raise, are reiterated here.

(b) However, the Supreme Court might very well think it appropriate first to consider the following three issues, all other issues being secondary thereto:

(aa) Can ad valorem tax assessment increases be made by a county board of tax assessors by merely increasing the fair market value of most properties, and their concomitant 40% assessment figures, by merely arbitrarily and discriminatorily raising the two pertinent values by flat percentage increases on all properties in a particular category or sub-category, as listed in the columns of the state-approved ad valorem tax digest form in that particular county, without any bona fide appraisals, or re-appraisals, as the case may be, of the individual properties, with only slightly more than 1% in variations of two basic percentage increases on real property parcels, which variations themselves mostly consist of a mix of the two flat percentage increases and which variations themselves only accentuate the arbitrary and discriminatory nature of the appraisal-less increases, and with the flat percentage increases on personal properties running as high as 500% on farm inventories, but with no increases whatsoever on urban inventories?

(bb) Were the tax assessment increases in 1972 in Macon County indeed made substantially in such an arbitrary and discriminatory manner, as indicated immediately above?

(cc) When tax assessment increases are made in the manner indicated in (aa) above, was, and is (for a limited time yet), arbitration an adequate remedy at law, even if the statutory provisions of Sec. 92-6912 (before the repeal of same in 1972) and case law were, and are, followed strictly?

(c) If this court negatively answers the question posed in (aa) above, affirmatively answers (bb), and negatively answers (cc), then the court may consider that it is immediately confronted with two further questions, before it can primarily rule in appellants' favor:

(dd) Was appellants' case a class action? and

(ee) Can this court consider the post-appeal fact that the six-named appellants have gone through an arbitration procedure, whether or not the particular procedure would or would not have been legal under factual circumstances most favorable for the procedure to be found to be legal?

(d) If the court affirmatively answers (dd) above and negatively answers (ee), it would seem to appellants that then the court might consider two more questions, before ruling primarily in favor of appellants:

(ff) Did the six-named appellants and their class, i.e., the balance of the appellants (probably over one-half of the total of about 3400 ad valorem taxpayers in Macon County), have any other adequate remedy at law (arbitration having been ruled out in the reasoning above) under the circumstances? and

(gg) Did the trial court then indeed abuse its discretion in failing to grant the primary injunctive relief which appellants demanded in August of 1972?

(e) If this court negatively answers (ff) above and affirmatively answers (gg) immediately above, the court might then ask two more questions:

(hh) Can this court consider the post-appeal facts that appellee Hammock's compilation has been approved by appellee Blackmon as the 1972 ad valorem tax digest of Macon County and that appellee Patterson (the Tax Collector) and his successor in office have collected some sums of money from some Macon County taxpayers, based on said illegal compilation, some in full, some partially, and some not at all? and

(ii) Is this appeal therefore moot?

(f) If this court negatively answers (hh) above, it would not have to consider (ii) immediately above. However, appellants assume that the court will consider the post-appeal facts of (hh), and perhaps properly so, but the court might also want more proof as to what sums have now been paid and by whom and in relation to their individual, illegal tax bills, so as to know best how to direct the trial court.

(g) Appellants do not consider that consideration by the court of the post-appeal fact of arbitration by the six-named appellants is necessarily controlled by the same principles of law and equity as is the post-appeal fact of some payments by some people to the Tax Collector of Macon County before and after December 20, 1972. However, even if they are both considered, the court might very well find said arbitration procedure to be a mere nullity, which has had no significant monetary consequences yet, and which can be easily terminated, whereas if, say, half of the total sum anticipated to be collected as property taxes for 1972 by appellees has already been collected, this court has, and the trial court, upon reversal, will have, a considerable problem, assuming, of course, a negative answer to (ii) above:

(jj) Should all money illegally collected as ad valorem taxes be refunded immediately by the governing authority of Macon County, or should refunds of overpayments only be made after a legal digest is prepared, at the same time underpayments from other taxpayers are being collected?

(h) If the latter course in (jj) is taken, appellants would not object, for they know that they must pay 1972 taxes, whatever the legal amounts will be, sooner or later, and many of appellants (other than the six-named ones) have apparently already paid the same sums that they paid in 1971, for 1972.

(i) Further, the trial court in the Fayette County case this year, and also the trial court in Walton County case, apparently ordered the tax collectors in those counties to accept voluntary, and partial payments, after having restrained them from forcibly collecting any ad valorem taxes based on what they had ruled to be illegal digests. Therefore, said latter course in (jj) above seems to have at least two respectable precedents, which, of course, pose one other question:

> (kk) Should the Tax Collector of Macon County be ordered to continue to accept any money tendered by any taxpayer as a partial payment, or tentative payment, subject either to further payment or refund, when the legal amount for that individual is finally determined?

(j) The principles of equity and justice seem to dictate an affirmative answer to (kk) immediately above.

(k) However, if the court has ruled thus far in favor of appellants, have all appellants' demands been met? No. The next major questions then facing the court are:

> (ll) Shall the Supreme Court of Georgia give appellants any substantial relief as demanded in the prayer lettered (i), in their original complaint (to be found at R-23, which demand was treated by the trial court in its findings of law in paragraphs 5 and 7, although the trial court entered no order in reference thereto, unless a denial is necessarily to be implied), said demand being, in essence, that all ap-

pellees, and their successors in office, be restrained and enjoined from assessing property and collecting taxes thereon from appellants until all parcels of all classes of property in Georgia are sought out, found, discovered, and identified, preparatory to assessing all such property at the same rate and taxing all such property at the same rate by the state, regardless of local school needs?

(mm) If a denial is not necessarily implied from the trial court's findings of fact, of law, and from the order itself, considered as a whole, and if, therefore, there is no order entered of the trial court, from which appellants have appealed, nor could appeal, is it not now incumbent on the Supreme Court to direct the trial court to enter a judgment thereto with all reasonable and deliberate speed?

(nn) However, if the Supreme Court thinks, to the contrary, that the trial court has effectively and finally denied the relief sought, as discussed just above, should not the Supreme Court of Georgia now address itself to the broad problem posed, take this case to its bosom and keep it there, and begin to direct some basic relief for appellants, while the General Assembly is in session, as follows: by finding that the trial court erred in dismissing appellees Blackmon and Davis; by then directing the trial court to order appellee Davis to make comparable ratio studies of tangible personal property (in relation to his ratio studies of real property) located throughout the state, with special attention to be given to inventories of manufacturers, wholesale merchants, and retail merchants; by directing appellee Blackmon, with sufficient staff, to seek out all such personal property, with the assistance of all tax receivers and tax commissioners in the state; and by having all such tangible personal property appraised (at shelf values and not cost values) by

agents of all local boards of tax assessors; by having all local tax assessor boards assess all such personal property at 40%; by having all tax receivers and tax commissioners include all such tangible personal property in their tax digests for 1973; and by having the trial court join all such county tax officials, and all county commissioners, throughout the state as necessary and indispensable parties defendant to this suit in equity?

(oo) Would this not be a reasonable beginning, leaving the harder problem of the unconscienably disparate rates of taxation on money and land to 1974?

(l) If questions (ll), (mm), (nn), and (oo) immediately above do not appear to be reasonable to the Supreme Court of Georgia, appellants respectfully submit that the basis for the appearance of unreasonableness is that the basic ad valorem tax statutes of this state, coupled with the constitutional provisions of the state and nation for due process and equal protection of the law, are themselves unreasonable, because they are virtually impossible to administer in a constitutional manner, even at prohibitive cost.

(m) Therefore, if the court should agree with appellants basically, as to the proposition just set out, in (1) above, appellants respectfully suggest and submit to the court that it is then confronted not with the question of whether or not to instruct the trial court to issue temporary restraining orders and permanent injunctions calculated to phase out ad valorem taxation of appellants, but with the question of instructing the trial court as to what deliberate speed to employ in phasing out such taxation of appellants, say, by the end of calendar years 1973 or 1974.

(n) Regardless of what position this court takes on the broad question of whether to require state and county tax officials to make a bona fide attempt to administer the ad

valorem tax statutes in a constitutional manner, or to phase out ad valorem taxation altogether, the Supreme Court, if it has ruled primarily in favor of appellants to this point, as to 1972 taxes, still is faced, appellants earnestly hope and respectfully submit, with their demand and prayer for injunctive relief against the same sort of illegal and unconstitutional methods of assessment in 1973, for 1973, in Macon County, as were used in 1972, which demand and prayer is implicit in prayer (i), (j), and (k), of the original complaint (R-23), and in prayer (N) in the third set of amendments of appellants (R-80), if indeed not explicit in said prayer (i) (R-23), inasmuch as it is surely true that merely because a court might not see fit to grant all the equitable relief sought by a petitioner, the court is not compelled by any rule to grant no relief to that petitioner. The smaller request is embedded in the larger, as certainly as the allegation of a lesser crime of the same nature is embedded in the indictment alleging a greater crime.

(o) Consequently, appellants consider that the Supreme Court should instruct the trial court, in its reversal as to enumerated error number 22 (Page 6 of Enumeration of Errors), that it will be error again not to restrain and enjoin appropriate appellees, and their successors in office, from assessing property and collecting ad valorem taxes in Macon County in 1973, and thereafter, by use of the same, and similar, unconstitutional, and otherwise illegal, methods as were, and are being used as to 1972 taxes.

(p) Inasmuch as appellees Blackmon and Davis in their brief, page 4, last paragraph, aver that appellants have shown "a disinterest" in the dismissal by the trial court of them, and that appellants have possibly even abandoned enumerated errors 8, 15, 21, 29, 31, 36, and 37, perhaps appellants should emphasize here that they, indeed, have not abandoned said several errors most directly pertaining to appellees Blackmon and Davis, and that, indeed, they are

interested in keeping appellees Blackmon and Davis in the case.

(q) Appellants consider appellees Blackmon and Davis, and their successors in office, as indispensable parties to this case, and even if this court rules that the dismissal of said two appellees, as apparently entered of record on November 27, 1972, by the Clerk of the trial court, was not properly appealed because no mention of said dismissal order was made in appellants' notice of appeal, appellants respectfully contend that the Supreme Court of Georgia should instruct the trial court to make Mr. Blackmon and Mr. Davis parties defendant once again because of their being indispensable to a just conclusion of the case. Consequently, this may be another question for the Supreme Court, as well as said seven errors listed in (p) above.

(r) The Supreme Court may also find that, in considering the more general issue of class action, it has to answer the more specific question of whether or not any particular procedure has to be employed by one or more named plaintiffs alleging a class action, to determine more precisely who is and who is not indeed a member of the class as defined by the complaint, when no defensive pleading raises the issue of procedure to determine the members of the class, when the trial court itself established no rule as to such procedure, and when there is no rule for such procedure set out in state law, either by statutory or case law.

(s) Appellants consider that the issue of the constitutionality of various statutes of this state has been raised by appellants and that the issue is still before the court, namely, as to those statutes indicated in section C, in the Statement of Jurisdiction, in the Enumeration of Errors of appellants, as follows: (a) through (j), on pages 10, 11, and 12 of the Enumeration of Errors.

APPENDIX O

C. Dismissal of Complaint as to Appellees Blackmon and Davis

There was a dismissal of the complaint by the trial court, apparently on September 27, 1972 (R-81), and the notice of appeal filed by appellants on October 6, 1972, made no reference to said dismissal dated September 27, 1972.

However, appellants enumerated error 8, on page 3 of the Enumeration of Errors, and errors 12 and 15 on pages 4 and 5, and errors 21 and 22, on page 6, and errors 29 and 30, on page 7, and errors 31, 34, and 36, on page 8, ". . . raise on appeal . . ." said dismissal order of appellees Blackmon and Davis, because said dismissal ". . . may affect the proceedings below . . ."

Ga. Code Ann., Sec. 6-701 (Acts 1965, p. 18; 1968, pp. 1072, 1073), of Title 6, "Appeal and Error," seems to be mandatory in requiring the court to review said dismissal of appellees Blackmon and Davis, and appellants respectfully point out that said two appellees do not contend in their brief that their dismissal is not reviewable, nor did they in oral argument on January 9, 1973.

It seems obvious that review is mandatory and that said two appellees know this to be the law.

Therefore, should the complaint have been dismissed as to them or not?

Appellants contend that the State Revenue Commissioner and the State Auditor are "necessary" or "indispensable" parties, there being two other types under the Georgia Civil Practice Act, "conditionally necessary parties" and "permissive parties." See Ga. Code Ann., Sec. 81A-119(a), Sec. 81A-119(b), and Sec. 81A-120(a), respectively.

> "A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be afforded among those who are already parties, . . .," etc. Sec. 81A-119(a).

Forty-one pages of the transcript in this case are devoted exclusively to communications in 1972 from appellees Blackmon and Davis to most of the county appellees (T-249-288), and there are many references elsewhere in the transcript to dealings between the county appellees and agents of either Mr. Blackmon or Mr. Davis, in 1972 and in 1971, all of which evidence indicates very forcibly that said two state officials, appellees here, were primarily responsible for the unconstitutional and otherwise illegal property tax assessment increases in Macon County, Georgia, in 1972.

Without Mr. Blackmon and Mr. Davis, and their agents, two of which agents of Mr. Blackmon, i.e., Mr. Robert Pond and Mr. Paul Saxon, operated in Macon County, off and on, over a period of months in 1972, the Board of Tax Assessors of Macon County simply would never have acted in such a radically and obviously illegal manner.

Please, take a look at appellee Walter Forsling's testimony on cross-examination about the pressure of said state officials on county officials (T-179-180-185).

The county officials were given no official orders to raise the assessments by certain percentages on all property in certain columns of the digest for 1971. Said state officials simply told the county officials that, if they (the county officials) did not do it themselves, the 1972 digest for Macon County would be rejected and then Mr. Blackmon would do it himself.

This is what happened all over the state of Georgia in 1972, as this court very well knows, and there were two basic responses by the county officials. Some refused to

make illegal increases themselves and sent their newly compiled digests to Mr. Blackmon as quickly as possible, knowing that they would be rejected.

This forced Mr. Blackmon to order the illegal, flat percentage increases himself, pursuant to Ga. Code Ann., Sec. 92-7001(c), which is illegal because it violates both the state and federal constitutions, as to due process and equal protection of the law.

Of course, even as to said sub-section (c), the State Revenue Commissioner has tried to get himself, and his successors in office, off the hook by having inserted in the middle of the sub-section the following sentence:

> "The State Revenue Commissioner may, if he deems appropriate, return the digest to the local board of tax assessors to make adjustments in the valuation of any class or classes of property in the tax digest of any county as may be prescribed by the commissioner to achieve the purpose and intent of this Chapter."

This deceptively vague sentence is supposed to fool this court, and, of course, to fool lower courts and county officials. Mr. Blackmon's orders rejecting a county's digest now refrain from putting the percentage increases in writing.

The writing refers to "adjustments" so that the various columns will be increased, so as to comply with the findings of Mr. Davis' latest ratio study, and the State Revenue Commissioner is then supposed to be in the clear.

He is then supposed to be able to say, "I didn't order those arbitrary and discriminatory tax assessment increases on those individual taxpayers in that county. I didn't flagrantly violate the constitutional rights of those poor, illiterate homeowners and those defenseless widows; those county tax assessors did it."

Well, of course, this is a farce, a shell game. Now you see it, now you don't.

The effort to conceal the guilt of the State Revenue Commissioner is even more clumsy when you compare the new, 1972 Section 92-7002 with the old section. The new section contains no reference to ". . . the fixed per centum of increase . . ." required by the State Revenue Commissioner on ". . . all the individual returns of all the taxpayers of the county upon the specified class or classes of property accordingly," as is found in the old section.

The 1972 version of Section 92-7002 reads as follows:

> "Upon receipt of the notice from the State Revenue Commissioner required by section 92-7001, the county board of tax assessors and the governing authority of the county shall take such action as required to effect the adjustments made by the commissioner to the county digest and county millage levy." (Acts 1966, pp. 45, 47; 1972, pp. 174, 175.)

However, the General Assembly left in the sub-section (c) of 92-7001, above said new, obscure sentence inserted in 1972, all of the old language about ". . . a fixed per centum . . ." to be added to ". . . the county valuation of any class of property in any county . . ."

Appellants respectfully contend that the State Revenue Commissioner and his staff had become acutely conscious of this court's rulings against raising tax assessments by arbitrarily fixed percentages, such as in **Register v. Langdale**, supra, and as a consequence, said changes in Sec. 92-7001 and Sec. 92-7002 were made by the General Assembly in 1972.

Said new sentence in 92-7001 and the entirely new 92-7002 appear to try to eliminate the percentage increase orders of the State Revenue Commissioner, but appellants

respectfully contend that the attempt to appear to eliminate such percentage increases to be ordered from Atlanta has failed miserably. The promoters of the new legislation did not really want to eliminate the statutory authority of the State Revenue Commissioner to order arbitrary percentage increases. Therefore, they left the explicit authority in Sec. 92-7001.

However, as long as the State Revenue Commissioner has the statutory authority to order percentage increases and as long as his agents are present at meetings of county boards of tax assessors when the boards make such arbitrary percentage increases, and when the county tax assessors have otherwise and previously been made well aware of the arbitrary percentage increases that the State Revenue Commissioner expects before he will approve their respective digests, why should anyone be deluded by said 1972 legislative ploy?

Of course, the single most important piece of legislation in 1972 that helped to create the virtual chaos that we have had in this state, and still have, in ad valorem taxation, is the repeal of sub-section (d) of Sec. 92-7008, which subsection required an average to have been obtained of three yearly ratio studies on real property, in each county, beginning with the 1971 ratio study and using the 1972 and 1973 studies, before an earnest attempt was to have been made in 1974 to use the ratio study as the principal tool to implement ad valorem tax equalization throughout Georgia.

When the General Assembly, with whatever outside stimulation it may have had, chose in early 1972 to repeal said sub-section (d) and thereby accelerate the program by two years, it really required impossible things of the staffs of appellees Blackmon and Davis and of the county officials responsible for local administration of the property tax laws.

As mentioned earlier, Sec. 92-7011, both before and after the 1972 legislative change, requires the State Auditor to furnish the latest ratio study information to the county taxing officials no later than November 15 of each year, which ratio study must have been completed no later than October 30 of the same year.

Appellee Davis presented the 1971 ratio study information to the Macon County officials on May 16, 1972 (T-272), six months late, and apparently all other counties in the state got their information at approximately the same time, because some of the information on all counties had to be made available to all counties (T-267 to 271).

As said above, when faced with the dilemma presented to them by appellees Blackmon and Davis in May of 1972, some county officials forced Mr. Blackmon to order "adjustments," but some, like the Macon County officials, chose to slap on the arbitrary increases themselves.

Certainly there was no time to do anything much but "slap on" some arbitrary increases, when Ga. Code Ann., Sec. 92-6917, requires the county tax assessors to have completed ". . . their revision and assessment of the returns . . . by June 1 of each year."

Appellees Blackmon and Davis gave the county tax assessors throughout the state 15 days (from May 16 to June 1) to reappraise all parcels of all tangible property in the state, except for about two counties, i.e., Echols with a 37.64 ratio and Troup with a 36.97 ratio, which were so close to the 40% ratio that perhaps only a little reappraising might have sufficed.

All other counties had lower ratios, and it is interesting to note that several of the most populous counties had low ratios, very near Macon County's 28.76.

For instance, Fulton's was 28.25, almost identical with Macon County's.

Bibb County's was 30.30.
Dougherty County's was 28.77.
Chatham County's was 31.26.
Cobb County's was 29.94.
Thomas County's was 27.32.
Sumter County's was 26.83.
Tift County's was 30.49.
Upson County's was 28.84.
Ware County's was 26.33.

It is further interesting to note that Echols County had the best ratio of any county in the state, i.e., said 37.64%, when Echols County has been a whipping boy for city denizens lo these many years, and when it is still the vogue among city people to cry out against the pine barons, etc.

Talbot County is another example of a rural county which apparently has already been paying taxes better than most urban counties. Talbot's ratio was 35.16.

Of course, these ratio figures are strictly from studies of land, and if the same effort were made on personal properties, especially on inventories in cities, small and large, and then averaged with the land ratios, no doubt the ratios for the urban counties, and cities, would be shocking to everyone.

And this is the point of this section of argument, appellees Blackmon and Davis are given great authority and responsibility under Georgia's ad valorem tax statutes to study real property and to administer all of our tax statutes (in reverse order), and they have been trying to execute their statutory duties.

However, they have failed in many instances, in Macon County and elsewhere, to comply with these statutes, and

beyond these statutory failures, they have failed to abide by either the state or federal constitutions as to due process and equal protection, mainly perhaps because many of the statutory tax laws are unconstitutional.

How, for instance, could appellee Davis have satisfied the constitutional mandates for equal taxation on the same class of property, i.e., both real and personal tangible property, when Ga. Code Ann., Sec. 92-7008 (f), in the last sentence (before the 1972 revision of sub-section f), almost as an afterthought, only says, ". . . and he may develop separate ratios for personal property"?

And the 1972 revision of said sub-section (f) is even more unconstitutional. The last sentence now reads:

> "The Auditor shall use the same ratio for other personal property excluding motor vehicles and bank stock within the county as is finally determined for real property within the county." (Acts 1970, pp. 542, 543; 1972, pp. 829-831.)

Of course, appellee Davis, on the 1971 ratio study, did exactly what this new statutory provision now requires of him (T-273). He indicated to appellee Blackmon and to Macon County tax officials that Macon County needed to raise the overall fair market value, and consequently the assessment value, of personal property in Macon County, with said exceptions, by 39%, or thereabouts, i.e., divide 28.76 into 40.00 and disregard the first digit of the resulting quotient.

Appellants respectfully remind the court of **Register v. Langdale**, supra, in which case this court held that the tax value of personal property can not be determined by using a percentage of the value of the real property on which it happens to be located. The Lowndes County tax assessors had been using 10% of the tax value of the land for household goods.

The principle is the same, and there can be no question about all efforts by everyone supposedly toward equalization's being unconstitutional until the state at the very least repeals said new provision of said sub-section (f) and until there is at least some semblance of equal efforts in studying, finding, appraising, assessing, and taxing both real and personal tangible property in this state.

This is why appellees Blackmon and Davis are indispensable parties defendant in this case. They have both statutory and constitutional authority and responsibility to influence ad valorem tax procedures and results in Macon County (if ad valorem taxes are constitutional at all, which appellants do not concede, regardless of any comment here or elsewhere by them to accelerate the progress of argument and to minimize the length of the record and briefs), but appellees Blackmon and Davis should be restrained and enjoined by the trial court from executing their apparent duties in unconstitutional and otherwise illegal ways.

There can be no justice for appellants if appellees Blackmon and Davis continue to conduct themselves according to Ga. Code Ann., Sec. 92-7008(f), Sec. 92-7001(e), and Sec. 92-7002, among other statutes.

And arguments such as appellees Blackmon and Davis made in the trial court (T-1 to 20), generally to the effect that the ratio study of 1971 has nothing to do with this case, because it was made in connection with the Minimum Foundation Program and education, etc., and because the State Revenue Commissioner doesn't really do anything in a county, or to a county, until he rejects its tax digest, simply beg the question.

The entire tax equalization program revolves around these two state officials, and they are indispensable parties defendant in any tax case initiated by aggrieved ad valorem taxpayers in any county in this state as a result of the equalization program.

APPENDIX P

E. Is All Ad Valorem Taxation Illegal Because It Cannot Be Administered in a Constitutional Manner?

At first blush, even perhaps at second or third blush, the notion that all ad valorem tax laws may be unconstitutional hardly seems worth considering.

However, why did the State of Georgia amend its constitution in 1970, providing for the abolition of ad valorem taxes on household goods? Was it not because of the many, recurring cases in which the Supreme Court of Georgia was compelled by legal and equitable exigencies to rule against local taxing officials who had determined the values of household goods in one or more arbitrary and discriminatory manners, such as assessing the value of the household goods of a homeowner at 10% of the value of the house itself, that is, the house and lot, i.e., the land and its improvements, while failing completely even to try to discover and tax household goods of non-homeowners, i.e., renters, tenants, lessees, because it was not economic to discover and appraise properly all household goods, i.e., the governmental, administrative costs would have exceeded the resultant ad valorem tax revenue? See the Constitution of the State of Georgia of 1945, Article VII, Section I, Paragraph IV.

If one acknowledges the truth of the above, one might still think: "Well, so what? Everybody is treated fairly by the exemption of household goods. It is just another form of the homestead exemption."

But does it treat everybody fairly? Does the new exemption even coincide with the constitutional requirements of uniform taxation on the same class of property, let alone the constitutional mandates of due process and equal protection?

Under the new exemption, hypothetically, Elizabeth Taylor and Richard Burton could move to Georgia as permanent residents, rent a house, rent a car (or several), but bring with them, among other notable baubles, Miss Taylor's $1 million diamond pendant, and never pay any ad valorem taxes to any level of government in Georgia, except possibly a pittance on whatever intangible personal property they might be kind enough to return for taxation, including 10¢ per $1,000.00 on cash money.

However, if another wealthy couple moved to Georgia and built a $1 million home, instead of frivolously perhaps owning a $1 million bauble, this other couple would pay dearly in ad valorem taxes every year from then on, say, from approximately $10,000.00 to $16,000.00, depending on whether they built their home in a city or in the country, and in which city or county. Of course, the homestead exemption of $2,000.00, or $5,000.00, would benefit them very little.

It is difficult to develop much sympathy for the tax problems of such wealthy people, perhaps, but consider another hypothetical case of still another couple who move to Georgia, but who are not quite so wealthy, but who want to make a cattle ranch out of the sandy blackjack oak land of northwestern Macon County, and just manage to borrow most of $1 million which they use to buy and improve that blackjack oak land, building only a modest home thereon for themselves.

They have legal title to $1 million in land and its improvements, but owe most of it to some creditor. Nevertheless they will pay approximately $10,000.00 to $12,000.00 in ad valorem taxes each year, as long as they manage to hold on to the place.

This new exemption on household goods not only favors the acquisition and retention of consumer goods over the

purchase of capital goods but positively favors the acquisition of baubles and the purchase of other items of conspicuous consumption over even the improvement of one's home.

Some examples that one might think of readily tend to indicate that there are not likely to be many such consequences. For instance, if one could afford to build a $10,000.00 swimming pool for the family, he might not worry much about the extra $100.00 to $160.00 per year in ad valorem taxes.

However, what of a Georgia taxpayer, say at the end of a lifetime's operation of a successful business, who has an extra $100,000.00 that is not already invested, which sum he can afford to spend for his wife's and his own pleasure and comfort?

Should he build a new home? Add to his old one, which is already quite nice, and pay another $1600.00 per year in property taxes? Or perhaps take advantage of this new household goods exemption and indulge himself by buying some paintings and other works of art to grace his home?

Such works of art just might also greatly increase in value and therefore constitute a capital investment immune from property taxes.

And how about antiques of all sorts?

How about rare books?

And other curios in a rising market?

It is an axiom of political economy that the more heavy the particular tax burden becomes, the more that particular tax will affect the financial plans and personal economic strategy of the taxpayer.

Taxes have consequences other than the mere transference of money from the pocket of the taxpayer to the till of the tax collector.

The point is that we do not yet know what the economic and tax consquences have been of the new household goods ad valorem tax exemption, but it is a certainty that there have been such consequences; and it is a further certainty that the new exemption has required the owners of real property to pay an even more disproportionate share of ad valorem taxes. How much more is the question.

So we see that the net effect of the many complaints of owners of real property, that they were also being taxed in an arbitrary and discriminatory manner on their household goods, has been said new constitutional amendment exempting all household goods, which amendment has relieved some citizens of the only ad valorem taxes they were paying and has shifted more of the tax burden to the owners of real property.

Is it possible that by now complaining repeatedly about the failure of tax officials to tax inventories of businesses, owners of real property, and especially owners of rural real property, will effect still another constitutional amendment exempting all inventories of all businesses from any and all ad valorem taxes?

This question is not far-fetched if one keeps in mind the reasons for abolishing ad valorem taxes on household goods and personal effects. It is also helpful to recall the problem of automobile dealers' shifting cars across state lines for 48 hours, just before January 1.

Justice Hawes, from the bench, during oral argument on January 9, commented about his experience as State Revenue Commissioner, to the effect that the most difficult part of his job had been to get inventories returned for taxes.

And even if the businesses report the real total amounts of their inventories, there is a built-in preconception by local tax officials that the fair market value of those in-

ventories is the original cost basis of the owner-taxpayer, rather than the shelf value, i.e., the retail price to the consuming public, their rationalization being that the difference between the cost basis of the merchant and the shelf value is composed of many other costs to the merchant, the main one's being the wages of store employees, and also composed, of course, of some profit, hopefully.

This original cost basis is gospel with the Joint City of Atlanta-Fulton County Board of Tax Assessors, which gospel must diminish their total digest by hundreds of millions of dollars, while appellees Blackmon and Davis and the Macon County tax assessors have determined in 1972 that all hogs and cattle shall be returned, for fair market value, at the total price farmers might obtain when they are sold at the livestock auction markets in the area, where they are usually sold, i.e., $150.00 per cow and $75.00 per hog, although many hogs sell for less than $75.00 and some cows sell for less than $150.00.

Furthermore, apparently this sort of extraordinary increase on livestock returns is being made throughout the state, with pressure from appellees Blackmon and Davis. In many instances, farmers buy weaned pigs at these same livestock markets for as little as $10.00 per head, take them back to their own farms, feed them corn they have also purchased, and salt and minerals, and other expensive dietary supplements, and house them in expensive pig parlors, and water them from expensively drilled wells, and by expensive water pumps, etc., etc., etc., with costs added upon costs until the farmer finally produces sleek, fat, healthy 200 lbs. No. 1 hogs, after about six months, ready for the consuming public, which just might bring $75.00 each, but which might also suddenly be only worth $50.00 each, or less, if the market has been glutted.

How is the retail merchant any different from the hog farmer? Why not allow the farmer to return that $75.00

No. 1 hog that he was just about to take to market, but still unfortunately owned, on January 1, at his original cost basis of $10.00?

And what about the owner of forest land? Say he buys some cut-over land for $53.17 (which is the value of Mrs. Ruby A. Webb's 240 acres in the ratio study at T-279), plants it in pine at a cost of, say, $20.00, per acre, then practices good forestry methods for the next 30 years at the average cost of $2.00 per acre per year, and pays 8% interest on the money borrowed to buy it and plant it, so that he finally has about $300.00 per acre invested in his fine tract of pine timber, without attributing any value to his own time spent lavishly on it over the 30 years, and suppose, one step further, that he can then sell it, after 30 years, for $300.00 per acre (instead of $110.29 per acre for the highest-priced tract of timber in the 1971 Macon County ratio study, i.e., the 272 acres sold by W. T. Jolly to Southern Crate and Veneer Co., T-278): Should he pay ad valorem taxes on said tract of pine land, year after year for some time before and after 30 years, on the basis of $300.00 per acre as the fair market value, or should he be allowed to use the original cost basis of $53.17 per acre as the fair market value, just as Rich's is now allowd to use its original cost basis on its multi-million-dollar inventory?

Unfortunately for the forest owner, he is now required to pay ad valorem taxes on his timber inventory year after year, for 30 years or more before he has a product ready for the consuming public, not using his original cost basis in the land, but the fair market value of the land and of the slow-growing crop of timber.

Suppose Rich's did not have a sale of any goods for 30 years but was still required to pay ad valorem taxes on the basis of the shelf value of its entire inventory? It boggles the mind!

Yet this is what is happening to the forest owner. Why should anyone grow timber if he is going to be taxed on the basis of $300.00 per acre as the fair market value?

Part of the answer is that to date few tracts of timber sell for $300.00 per acre, as in the above hypothetical case, regardless of the original cost basis, regardless of the cost of good forestry practices through the years, ad valorem taxes paid, interest on the purchase loan. etc.

In Macon County in 1970, according to said 1971 ratio study, one tract of timber of 406.95 acres was sold by McLendon S. DeVaughn to J. P. Davis and Thos. Chapman (T-276) for the total price of $41,200.00, which works out to about $101.00 per acre, which tract is partially within the city limits of Montezuma and partially outside (T-62-93-161-162).

Another tract of land, with 134.63 acres, partially farm, partially woodsland, and partially in the City of Ideal and partially outside was sold by Irving Bond and Carolyn Bond to D. L. Cannon for $9,999.00, i.e., $66.66 per acre (T-275).

And the highest-priced land in the ratio study was the 100.00-acres tract sold by Homer J. Vaughn to Martin Ray Greene, for $22,500.00, i.e., $225.00 per acre (T-276), which tract had various valuable assets, such as being mostly tillable land, flat but with good drainage, some planted pine, located on a paved road, and near other highly improved farm land and farm homes (T-103-104).

Another valuable tract sold was 228.01 acres by Frank G. Kelley to Alexander W. Webb, for $38,000.00, which comes to about $166.00 per acre (T-279), which tract also had an unusual and highly valuable asset, a peach orchard (T-104-105).

The second most valuable tract, according to an appraisal, was 245.00 acres of R. E. Suber, at about $180.00

per acre (T-278), but there is no information on it in the transcript.

It should, therefore, be obvious to the court that reports of universally fantastically high rural land values in Georgia are just so much propaganda by urban interests and real estate brokers' sales talk.

It is no doubt true that occasionally someone, loaded with money from selling his farm that has been engulfed by subdivisions in some metropolitan area, pays a fantastic price for a farm in south Georgia, or north Georgia, and it is no doubt true that some few rural counties in Georgia seem to have attracted enough of these suddenly-rich farmer-purchasers so that speculation has sent the asking prices on most other farms in these counties sky-high.

However, how does one account for some land, even partially in the City of Ideal, selling for $50.00, to $60.00, to $70.00 per acre still? And land, partially in the City of Montezuma, even though swamp land, selling for $101.00 per acre?

Of course, appellants have challenged, and still do, the method of appellee Davis in determining the sales price of a piece of land, i.e., merely using the sales figure on which the seller has chosen to pay the title transfer tax, but it is public information that pulp wood companies and others are still occasionally finding and buying rural land in Georgia for $75.00 per acre and less.

Another part of the answer, to the question above as to why anyone would choose to grow timber, is that there is a strong movement among owners of forest land to abolish the traditional ad valorem tax and go to a land-use tax, because the present system is becoming increasingly confiscatory with them.

Also, major spokesmen for Georgia farmers are endorsing the idea of the land-use tax.

However, the land-use tax has problems that are immediately obvious. For instance, if the lowest land-use tax rate were to be on woodsland, would not the owners of the parking lot at the intersection of Peachtree Street and West Peachtree Street in Atlanta dig up the concrete and asphalt and plant that property in pine trees?

If that sort of thing had to be stopped, and it certainly would, then some level and agency of government would have to determine what the optimum social use of each parcel of real property in the state is today, and again tomorrow what its optimum use is then, and on and on forever.

Appellants respectfully ask this court if it is not now possible, or virtually impossible, for state, county, city, and school government to determine fair market value in a constitutional manner, how would optimum, present social use of properties ever be determined in any way but in an unconstitutional manner?

As a matter of fact, to abandon our traditional, sorry ad valorem tax system now being urged, would be to jump out of the frying pan into the fire.

What is the nearest thing to owning the land, and all other means of production, and possibly even the better thing than owning it all? Having the power and authority to determine how it shall be used!

Certainly most of those who are urging the land-use tax would be shocked to think that they are proposing a scheme made-to-order for the Communists. Yet there it is. There's no blinking it. Our friends know not what they do.

However, perhaps, they can be stopped by this court if by no one else, or nowhere else, by the court's requiring in no uncertain terms that the ad valorem tax laws of this state be administered in a constitutional manner or not at all.

There is much talk and misunderstanding about the requirement for equalization of ad valorem taxes in this state, much of it to the effect that equalization is a new requirement, when in fact Georgia law has always required it, and also federal law for a hundred years.

Does not the fact that we are just getting around to any serious attempt to implement equalization say something about the impossibility to implement it in a constitutional manner?

Doesn't our avoidance of any serious attempt in the past say that our good forefathers knew in their hearts that a serious attempt at equalization would open a Pandora's box?

And have not these inadequate ratio studies, this "factoring," and these ill-considered changes in the tax statutes, in fact, opened Pandora's box?

This supplemental brief tendered for appellants, this 8th day of February, 1973.

Respectfully, by

Carl P. Savage, Jr.
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Of Counsel for Appellants

Please Serve

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APPENDIX Q

In the Supreme Court of Georgia

I. P. Cox, Sammie H. Cox, Irma J. Creel, F. Wheeler Smith, M. M. Bray, and Clemon Odom, Suing on Behalf of Themselves and All Other Owners of Rural Real and Personal Property in Macon County, Georgia, Subject to 1972 Ad Valorem Tax Assessment Increases for State, County, and School Taxes,

Movants,

vs.

John A. Blackmon, State Revenue Commissioner; Ernest B. Davis, State Auditor; Mrs. E. D. Hammock, Tax Receiver of Macon County; J. H. Patterson, Tax Collector of Macon County; Roy S. Windham, Sheriff of Macon County; Hugh D. Crook, Chairman, Herbert Coogle, J. M. Slaton, Randall Jinks, and Doyle H. Johnson, as Members of the Board of Commissioners (of Roads and Revenues) of Macon County; the Board of Commissioners (of Roads and Revenues) of Macon County; W. H. Guerry, Clerk of the Board of Commissioners (of Roads and Revenues) of Macon County; Walter Forsling, Chairman, Fred F. Virden, R. A. Phillips, James E. Heath, and G. L. Williams, as Members of the Board of Tax Assessors of Macon County; the Board of Tax Assessors of Macon County; and Bruce P. Hill, Clerk of the Board of Tax Assessors of Macon County,

Appellees.

Civil Action, File No. 27682
Appeal
Macon Superior Court
Macon County

MOTION FOR REHEARING

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In the Supreme Court of Georgia

I. P. Cox, et al., Appellants, vs. John A. Blackmon, as State Revenue Commissioner, et al., Appellees.	Case Number 27682 Appeal Macon Superior Court Macon County

MOTION FOR REHEARING

Come Now the six-named appellants and all others similarly situated, the latter of whom constitute the balance of the class and therefore the balance of the appellants, in the above-styled class action, all of whom are hereinafter referred to as "movants", and

Within the Time allowed by law in which to file a motion for rehearing, namely, within ten days from the date of the rendition of the judgment (the date of which is February 22, 1973), before the remittitur has been forwarded to the clerk of the trial court, and during the term at which the judgment sought to be reviewed was rendered (which is the January Term of 1973),

Move for a Rehearing and reversal of the decision rendered by this Court on February 22, 1973.

The Decision of the Court herein was contrary to the contentions of movants, and they respectfully show to the Court that in rendering said decision the Court overlooked certain material facts in the record and certain decisions, statutes, and provisions of the Constitution of Georgia and of the Constitution of the United States of America, which are controlling as authority and which require a different judgment from that rendered; and

FURTHER, MOVANTS respectfully show to the Court that the Court erroneously construed or misapplied certain provisions of law and certain controlling authorities hereinafter set forth.

PRELIMINARY STATEMENT

Movants saw in their case, in addition to their objective of relief for themselves, an opportunity to be of significant service to the state, at a time of ad valorem tax chaos, by cogently bringing to the attention of the courts at the earliest possible time and with the greatest possible diligence the facts as they existed in one county where "factoring," although being done officially by the county tax assessors, was creating a particularly bad situation, and by simultaneously showing to the courts, with the same promptness and diligence, the defects in the laws under which such pernicious events were occurring.

Movants presented their original petition in equity to the trial court on August 11, 1972, but this Court did not even render its adverse opinion until more than six months later, which opinion is only two pages long and does not deal with the issues involved.

Movants acknowledge that their supplemental brief filed on February 8, 1973, perhaps delayed the decision of the Court, but movants had not anticipated the need of a supplemental brief and produced it as expeditiously as possible, after they did determine that it was needed.

Movants further acknowledge to the Court that they quite well realize some other shortcomings in the handling of their case, regardless of their diligence and good intentions, which shortcomings they would certainly try to rectify if they had it to do all over again.

Movants still further are not unmindful of the awesome duties, responsibilities, and burdens of this Court, regardless of any prior remarks of movants which might have seemed to the Court to indicate otherwise.

If any such remarks have seemed offensive to the Court or have irritated the Court, movants are genuinely apologetic and urgently ask that the Court attribute any such remarks to the, perhaps, unusual fervor for justice by movants for others, as well as for themselves.

Movants are still full of zeal for justice, and they, consequently, further urge the Court to try to forgive them for any new manifestations of this zeal, which manifestations may of necessity be somewhat irritating to the Court.

Movants recognize that the burdens and responsibilities of the Court are especially heavy now with the ad valorem tax cases and further recognize that wisdom and discretion constitute the keystone in the arch of equity and that this Court is that keystone in this state.

What movants are asking now, essentially, is that the Court re-examine its decision of February 22 and try to determine whether or not it is a wise decision.

Movants can conceive of the possibility that the great number of issues raised by them was irritating.

They can also see that, possibly, the ultimate, logical resolution of some of these issues are so novel and laden with such grave consequences for our state, and possibly even for the nation, that the Court would prefer not to think about them.

But will these issues go away? Will their logical resolutions go away?

And if neither will go away, does not the Court have the duty to deal with the issues now and does not the Court have the opportunity to propel their resolutions now?

But if the Court, in its wisdom, thinks that the time is not yet ripe to deal with **all** the novel issues raised, nor ripe to adopt **all** their logical resolutions, is the time not ripe to deal with and resolve just the one issue of local "factoring"?

In **Griggs, Tax Commissioner v. Greene**, Case No. 27719, i.e., the Fayette County case, the Court has just laid to rest "factoring" by the State Revenue Commissioner of the various columns of county tax digests, in which columns of different categories of the same class of property appear, that is, different categories of personal and real tangible property, which categories have been established to aid the administration of the ad valorem tax laws by breaking up the amorphous mass of tangible property, principally perhaps so as to be able more readily to identify the property of the individual taxpayer, but not for the purpose of creating different classes of tangible property.

However, **Griggs**, supra, does not outlaw "factoring" of the entire digest of a county by the State Revenue Commissioner. He can still find that a digest presented to him for approval is 50%, 5%, or whatever percentage, less in its total fair market valuation, and therefore in its total assessed valuation, than it should be, according to the best obtainable information.

The State Revenue Commissioner can then reject that digest and instruct the county officials to raise these two total valuations by whatever percentage, and the county boards of tax assessors are supposed then to have re-ap-

praised some, or all, of the property of the county and thereby determine both new fair market values and new taxable assessment values, both higher than before, and also perhaps seek out new properties not as yet returned for ad valorem taxes.

In any event, the law will still require the county tax assessors to assess each and every property at 40% of its fair market value, and when the State Revenue Commissioner tells a county Tax Receiver, or county Tax Commissioner, and the county tax assessors that their digest is, say, 50% low (or 5% low perhaps, assuming the best, that is, that in future years there will not need to be such radical revisions upward in most counties), tells them this in June or July when he rejects their digest, what is really going to happen immediately thereafter at the local level?

Even assume that in future years the State Auditor complies with Ga. Code Ann., Sec. 92-7011, and furnishes his yearly ratio study to the county officials by November 15 prior to the next tax year, but that the county officials have appealed his findings and the process has run into the spring of the next tax year, pursuant to Ga. Code Ann., Sec. 92-7012, or that the county officials have simply been slow to respond to the message of the State Auditor as revealed by his latest ratio study.

In short, for various reasons we will still have the probability of many tax digests being rejected in June or July, and some even later, as happened in 1972.

Reiterating, what will then actually happen? Will not the county officials inquire of the State Revenue Commissioner and of his agents why their digest was rejected, what is wrong with it, and how they should go about correcting it to the satisfaction of the State Revenue Commissioner and his agents?

Despite **Griggs**, supra, will not the State Revenue Commissioner still be charged with the responsibility to see to

it that all counties are appraising, assessing, and taxing tangible property equally among themselves and that all citizens within a county are having their tangible property appraised, assessed, and taxed equally among themselves?

Griggs does not invalidate sub-sections a, b, and d of Sec. 92-7001, and not even the most pertinent part of sub-section c, nor does **Griggs** invalidate Sec. 92-8406 and Sec. 92-8427, both of which latter code sections authorize and require the State Revenue Commissioner to administer all of the revenue laws of the state.

Griggs does not stop the equalization program, nor does it intend to, and the state is just now starting to implement the 1972 legislation which is codified as "Chapter 92-70A, State-Wide System of Gathering Information for Uniform Property Taxation."

Griggs does not abolish the use of the categories of tangible property on the county tax digest form, nor does **Griggs** invalidate Sec. 92-7008, which statute requires the State Auditor to make the yearly study of the different digest categories of real property in each county, and to adopt the same ratio for tangible personal property in each county as the yearly ratio study indicates for the combined total ratio of real property, fair market values in that county in relation to the fair market values for real property as found on the last year's tax returns.

Consequently, when the digest is rejected in the future (as early possibly as three months from now, in 1973), the county assessors are immediately going to think in terms of flat, arbitrary and discriminatory increases in fair market evaluations and taxable assessments, unless they have just concluded a county-wide re-evaluation program of real property, in which relatively rare instance they might just increase the taxable assessments on all tangible properties, both real and personal, by whatever overall percentage they might need for approval, say 5%, or some such relatively low percentage.

Even here, in this relatively rare instance of recent complete re-evaluation of real property, the overall percentage increase ordered for the county by the State Revenue Commissioner will be arbitrary and discriminatory when applied to tangible personal properties, if the county officials apply the overall percentage increase order to tangible personal properties, if the county officials apply the overall percentage increase order to tangible personal properties, which they do not have to do under **Griggs**, supra, but may.

However, putting any thought of tangible personal property aside for the moment, in most instances of the county digest's being rejected, there will not have been a complete and recent re-evaluation of real property, and after rejection of the digest in June, or later, there will not be sufficient time, even if the will and funds were available, to do a complete re-evaluation of all real property in the county.

As a consequence, the county board of tax assessors will then most likely do exactly what the Board of Tax Assessors of Macon County did in 1972: Arbitrarily and discriminatorily increase the assessments of virtually all parcels of real property, using some percentages, for the different categories, as obtained from the State Revenue Commissioner and the State Auditor and their agents, based on the yearly ratio study of the State Auditor pursuant to Sec. 92-7008 (f), and after January 1, 1976, perhaps based also on data accumulated and analyzed by county appraisers, pursuant to Chapter 92-70A.

Why will the county tax assessors act in this manner in the future? For the same reasons that the Board of Tax Assessors of Macon County did so in 1972, to wit:

a. They are usually not paid enough to be encouraged to spend much time on the job and usually do

whatever little, they actually do, at night; in effect, they are "moonlighting."

b. They usually have had no special qualifications for the job, and despite 1972 legislation setting some minimum standards (see Ga. Code Ann., Sec. 92-6905), there will still be many county assessors in office for several years to come who are exempt from the now minimum standards, which standards themselves are not very high.

c. Many county assessors are easily overawed by state officials and have a strong tendency to follow their suggestions, whatever they are.

d. The county assessors are under financial pressure from the Board of County Commissioners, which latter board appoints the assessors initially, re-appoints them, and determines their daily pay and reimbursement for expenses; consequently, the independence of the assessors is a myth, unless they are in a position to work cheaply, namely, for as little as $3.00 per day before 1972 legislation and $20.00 per day now.

e. When the county's digest is rejected in June or later, the county assessors then have but one objective and that is to satisfy the State Revenue Commissioner, and thereby satisfy the county commissioners.

This Court in **Griggs**, supra, has held it to be unconstitutional for the State Revenue Commissioner to order different percentage increases in the assessments of the different categories of the same class of property however divided and for whatever reason divided into different columns in the county tax digest form.

He must now order, if any increase, merely an overall percentage for the county and allow the county tax assessors then to try to correct their work.

But has not the Court given the ad valorem taxpayers of Georgia only half a loaf? Is it even as much as half a loaf?

Griggs, supra, would not have helped movants in Macon County in 1972.

And **Griggs** will not help any county in 1973 and future years, if the State Revenue Commissioner may still "suggest" percentage increases in the different digest categories and "advise" the county tax assessors that their county's tax digest will be accepted if they will just increase this digest column by such-and-such percentage, that digest column by another percentage, and so on, through all of the digest categories.

The ad valorem taxpayers of Georgia will have no relief under **Griggs**, if the Court does not reverse the trial court in **Cox v. Blackmon**, the case at bar.

Mr. Blackmon and his staff probably already realize this, and it should surprise no one if the State Revenue Commissioner should think that he has lost a battle but won the war.

Form is nothing, substance everything.

The Russian, Communist constitution is beautiful. It seems to insure perfect social justice and to promulgate the perfect society. However, it is simply all form and no substance.

Of course, movants do not suggest any close similarity between Russia and Georgia, U.S.A., but merely make the reference to make the point.

In all due respect to the Court, however, the affirmation of the trial court in **Cox v. Blackmon** makes a mockery of this Court's decision in **Griggs v. Greene.**

Unless the ad valorem taxpayers of this state are provided due process of law and equal protection of the law

all the way through the taxing process, they will still have no justice.

What difference does it make if Mr. Blackmon and his successors, "order" various percentage increases for the various digest columns or "tell" the county assessors to make such unconstitutioinal increases?

The Court may recall the testimony of the chairman of the Board of Tax Assessors of Macon County, i.e., Mr. Walter Forsling, at T-179, which was as follows:

> "Q. Mr. Forsling, has the Board of Tax Assessors increased the assessment on personal property in Macon County this year?
>
> "A. We were ordered to—told to do so, not ordered: we haven't been ordered to do anything, that we had to raise the values."

If it is unconstitutional for the State Revenue Commissioner to "factor" the different digest columns at different rates, by direct order, it is just as unconstitutional for the county tax assessors to "factor" the digest columns in the same manner under the ominous presence of the State Revenue Commissioner, the State Auditor, and their agents, and by their indirect orders, which all taxing officials involved will swear under oath later constituted mere "advice," "help," and "suggestion."

This sort of thing is what freshmen in law school are taught to be transparent subterfuge.

However, it is certainly possible that, if the State Auditor complies with the law, in 1973 and future years, and gets his ratio studies to the county officials by November 15, the county assessors can then, between November 15 and June 1 reappraise all the property in a delinquent category and intelligently and fairly discover enough parcels that are, in truth, undervalued and raise their two

values, not by a fixed percentage, but according to professionally recognized methods and standards, enough so as to satisfy the State Revenue Commissioner as to that particular category and, consequently, as to the entire digest for the new tax year, without having a repetition of the unconstitutional behavior as occurred in Macon County in 1972, of both state and county officials caught in a time bind and in an administrative dilemma, neither of which was created by the officials themselves, but by hasty legislation demanding the impossible.

However, in the case sub judice, the unconstitutional behavior did occur, and such behavior is almost guaranteed to be repeated under the February 22 decision in this case. So far in **Cox v. Blackmon**, this Court has given the State Revenue Commissioner and all the county boards of tax assessors the green light to repeat the unconstitutional "factoring" of the different digest categories by the county assessors, under the strong "urging" and "advice" of the State Revenue Commissioner, if the "need" should arise again in any county.

And, sad to say, the "need" may very well arise again in Macon County in 1973, and in many other counties.

Movants respectfully observe that Justice Gunter in his dissenting opinion in **Griggs**, supra, is correct when he observes that the majority opinion frustrates the statutory intention to have the State Revenue Commissioner equalize ad valorem tax assessments among the individual taxpayers of a county, unless the Supreme Court of Georgia intends to tolerate local "factoring" under pressure, but not direct order, from the State Revenue Commissioner, such as occurred in Macon County in 1972.

Movants respectfully further observe that the terminology of Ga. Code Ann., Sec. 92-7001 (c), is unfortunate and confusing but that said sub-section obviously refers to the various administrative categories of the same class of

property, i.e., tangible, both real and personal, as Justice Gunter says.

Movants respectfully, however, do not agree with Justice Gunter that the "factoring" orders of the State Revenue Commissioner in **Griggs**, and in the Brooks County case, i.e., **Blackmon, Commissioner v. Brasington, et al.** (Case No. 27741), were not in violation of the Constitution of Georgia. Said orders also violated the U. S. Constitution.

However, Justice Gunter is correct in that said orders did not violate said sub-section (c) of Sec. 92-7001.

The trouble with said sub-section is that it intends to allow the State Revenue Commissioner to affix a definite percentage increase on the assessment of each and every parcel of property in a particular digest category in any particular county, without any notice to the individual taxpayer of the increase, and without allowing the county tax assessors to re-examine their returns, reappraise, and reassess some, if not all, parcels of property in the delinquent category, in differing amounts according to their fair market values, with notice to the individual taxpayers.

Just because sub-section (c) has the new sentence in the middle of it (as amended in 1972) which allows the State Revenue Commissioner to send the digest back to a county for the county assessors to make the "necessary" "adjustments" does not make it a constitutional statute, nor does the 1972 version of Sec. 92-7002.

In fact, of course, in 1972, the State Revenue Commissioner, in both the Fayette County and Brooks County cases, ordered the percentage increases himself and did not even try to use the local "adjustment route, opened to him with the 1972 revision of sub-section (c), but now that this Court has found the entire statute, i.e., codified as Sec. 92-7001, 92-7002, and 92-7002.1, to be constitutional, it is predictable that the State Revenue Commissioner will use the local

"adjustment" ploy, as it was used in Macon County in 1972, or use it after he rejects a local digest. Either way, i.e., before or after rejection of the county digest, the results will be the same, namely, hasty local "factoring," which will be unconstitutional.

Movants respectfully suggest that an equalization program is needed in Georgia. No ad valorem taxation will be administered in a constitutional manner without it.

However, as presently enacted, and as administered in 1972, and as it will probably be administered in 1973, the equalization program as a cure is worse than the ill.

Movants respectfully suggest that sub-section (c) of 92-7001 should be found to be unconstitutional by this Court in **Griggs**, **Brasington**, and **Cox**, so that the General Assembly will be forced to amend it, by using "digest categories," or some similar term, to clear up the nomenclature confusion, by then allowing the State Revenue Commissioner still to determine delinquent digest categories in a county, but then requiring that "adjustment" to be made no later than the next tax year, by the county assessors and with constitutional notice to the individual taxpayers involved, after the necessary properties involved have in fact been re-evalued.

Movants think the days should be over when the county political bosses and other important local people who use their unusual influence in an anti-social manner are allowed to cheat on ad valorem taxes, and only state officials can correct this sort of iniquity. But it must be done right.

More specifically as to the four different divisions of the majority opinion in **Griggs** and **Brasington** combined, the first division is correct.

The second division is correct in that all tangible property, both real and personal, constitutes one class under

the Georgia Constitution, and the General Assembly has no authority to create sub-classes of tangible property.

The third division is correct in that Ga. Code Ann., Sec. 92-7001 through 92-7002.1, does not create, nor attempts to do so, sub-classes of tangible property. Sub-section (c) of 92-7001 refers to digest categories of the same class of tangible property; otherwise, it is meaningless.

However, the third division is incorrect in holding that the State Revenue Commissioner created sub-classes by his orders to Fayette County and Brooks County. He merely followed the unconstitutional statute, and the trial courts, in those two counties, enjoined their enforcement, the trial court in Brooks County for the proper reason, namely, the unconstitutionality of Sec. 92-7001 and 92-7002, and the trial court in Fayette County for the wrong reason, namely, lack of notice by the Fayette County tax assessors to the individual taxpayers, after the State Revenue Commissioner had ordered the increases pursuant to Sec. 92-7001 (c), there being no provision in any statute for such notice.

Movants respectfully submit that the analysis of the trial court of Brooks County, in its interlocutory decree, is more exhaustive of the subject than that of the trial court of Fayette County.

The fact that the trial judge of Brooks County has been so deeply involved in so many ad valorem tax cases during the last several years may account for this.

How does the majority decision in **Griggs**, as to the Fayette County interlocutory decree, apply to the Macon County case?

The Court has affirmed that decree, not in part as in the Brooks County decree, but simply affirmed it.

What has the Supreme Court of Georgia affirmed?

Judge Whalen, on page 7 of his order, said that it was basic to a decision in the Fayette County case to recognize that, regardless of the fact that the State Revenue Commissioner had ordered the "factoring," the local assessors had actually done the "factoring" and consequently the defendant taxing officials were proceeding illegally in collecting taxes based on said increased assessments because the local assessors had a statutory and constitutional duty to give the individual taxpayers involved meaningful notice so that they could contest the increases.

If the Supreme Court has indeed affirmed Judge Whalen's interlocutory decree, without qualifying the affirmation in any way, the Court has incorrectly applied **Griggs** to the Macon County case, because in Macon County in 1972 the Board of Tax Assessors "factored" the various digest categories of property and then did not give legal notice to movants of the various increased assessments, which the trial court found to be a fact, as to the six named movants (R-83, paragraph 1), and all of the other hundreds of movants, the balance of the rural class, as well as owners of urban property, received the same illegal notice (R-25) (T-127-128), which did not inform the taxpayer whatsoever of the possibility of arbitration.

The Court, although it says it is affirming the trial court in this case, perhaps implicitly holds in the second division of its opinion that this is a class action, because, otherwise, there would be no need for the second division, wherein the Court holds that the case is moot "as to taxpayers other than the plaintiffs," unless the Court considers the second division necessary due to "Count II" of movants' complaint, which second count seeks to uphold a public right that officials perform their duties in a lawful manner.

However, for whatever reason, the Supreme Court of Georgia appears to movants to have held, in its said second division of **Cox v. Blackmon**, this case, that, even if the

six named movants have an adequate remedy at law in arbitration (which movants steadfastly deny), either the six named movants under "Count II" of the complaint, have, or the class other than the six named movants has, standing in this Court to have the trial court reversed as to its interlocutory judgment of October 6, 1972, if the case is not moot as to all Macon County ad valorem taxpayers for 1972.

Further, in the second division, the Court can only observe that "some taxpayers of Macon County" have paid 1972 "taxes."

Although contrary to the assertion of the Court in the second division, movants have not admitted anywhere or at any time that 1972 taxes have been paid by some Macon County taxpayers, movants having only admitted forthrightly in their supplemental brief that "some taxpayers of Macon County have paid some money to appellee Patterson, as Tax Collector of Macon County, as a result of said illegal and unconstitutional compilation . . . and . . . illegal demands . . .," which is quite different from admitting that "taxes" have been paid "by some taxpayers."

However, the point is that whenever the Tax Collector, or Tax Commissioner, of any county issues ad valorem tax notices, whether they are legal or null and void for one reason or another, some taxpayers will immediately come in and pay the money demand of the Tax Collector.

There can be no doubt that this happened in Fayette County, although movants see nothing in the pleadings, the order, or the briefs to cite to the Court on this point.

However, in Brooks County, Judge Calhoun expressly ordered the Tax Commissioner to accept any voluntary payment that any taxpayer wanted to make, which payment of money will be credited toward his ad valorem taxes whenever they are legally determined.

Movants, in all candor, cannot understand how this Court can rule that the Macon County case is moot, when all the proof that the court has that anybody in Macon County has in fact paid any "1972 ad valorem taxes," is an assertion of the State Revenue Commissioner to that effect in his brief in this Court, which is an unverified post-appeal allegation of fact, said assertion not appearing in the attached affidavit but in his arguments.

And as aforesaid, movants have only admitted that **some "money"** has apparently been paid to the Tax Collector in Macon County due to the illegal compilation being used as the 1972 digest and pursuant to illegal demands of the Tax Collector based thereon.

For all the Court should know, no "taxes" have been paid and not even any "money," and for all the Court probably really knows, only perhaps a small portion of the total receipts under said illegal compilation has been collected.

Movants respectfully contend that if the Court allows its present decision to stand, division 2 will come back to haunt it in future cases, for division 2 changes the case law on the point.

The Court cites **Grafton v. Turner**, 227 Ga. 809 (183 SE2d 458), to sustain division 2, but in **Grafton**, there had apparently been a genuine re-evaluation of all parcels of real property in Habersham County, by a professional appraisal company, during 1970, the year the complaint was filed, whereas there was virtually no "re-evaluation," in the proper sense of the term, in Macon County in 1972, regardless of the statement of facts in the opinion written for the Court by Justice Nichols, which statement of facts indicates cogently that the Court has overlooked the material fact that virtually all of the total of 5300 parcels of real property in Macon County were "factored" in 1972, not re-evaluated. The first, last, and only time they

were professionally appraised or evaluated, if you, please, was in 1963 and 1964 by the Carroll-Phelps company.

Further, division 2, as does the statement of facts, conveys the impression that the Court is laboring under the mistaken notion that all taxpayers in Macon County in 1972 were given the opportunity to demand arbitration, which clearly indicates that the Court has overlooked the material fact that no taxpayer in Macon County was sent a notice as to his increased assessment on real property which complied with Ga. Code Ann., Sec. 92-6911 (R-25), (T-127-128), not even the six that were ordered by the trial court.

However, **Grafton** seems to indicate that the taxpayers of Habersham were given the opportunity to arbitrate, although the opinion never really says so.

Grafton itself is really not a good opinion. It is shot through with contradictions and vagueness, and its headnote 3 is most misleading, in that it indicates that the suit in equity was filed after the tax digest had been approved, when in fact it had been filed long before the approval of the digest.

However, movants will now move on to an itemization of overlooked material facts and overlooked law and then make a closing argument, after having also itemized the issues involved in this case, which issues movants consider the Court has not reviewed and ruled on.

GROUNDS OF MOTION FOR REHEARING

1

The Court has overlooked the following material facts in the chronology of the record, to wit:

a. The original complaint of movants was presented to the trial court judge on August 11, 1972, and the trial

court judge signed the rule nisi on the same date, setting an interlocutory hearing for August 17, 1972 (R-27-28).

b. The trial court judge simultaneously on August 11, 1972, temporarily restrained by ex parte order all appellees to some extent (R-28).

c. The original complaint was filed by the clerk of the trial court on August 12, 1972 (R-5).

d. Sixteen of the county appellees acknowledged service and waived process on August 14, 1972 (R-29).

e. Pursuant to a request for a continuance from appellees Blackmon and Davis, the trial court, on August 17, 1972, rescheduled the interlocutory hearing until September 11, 1972 (R-30).

f. Appellees Blackmon and Davis made a motion to dismiss, dated September 7, 1972, and filed September 8, 1972 (R-31-36).

g. Defensive pleadings of appellees Blackmon and Davis, dated September 7, 1972, were filed September 11, 1972 (R-37-48).

h. The first amendments of movants were filed on September 11, 1972 (R-49-67).

i. The defensive pleadings of said sixteen county appellees were filed on September 15, 1972 (R-68-73).

j. The second amendments of movants were filed on September 15, 1972 (R-74-77).

k. The interlocutory hearing occurred on September 11, 12, and 15, 1972, and the testimony was transcribed, and the documentary evidence that was adduced was also included in the transcript (T-1 through 425).

l. The third amendments of movants were filed on September 26, 1972 (R-78-80).

m. The trial court dismissed appellees Blackmon and Davis by order dated September 27, 1972 (R-81).

n. The general interlocutory order of the trial court, dated October 5, 1972, was entered of record on October 6, 1972 (R-82-90).

o. The motion for supersedeas by movants was presented to the trial court on October 6, 1972, and denied by the trial court on October 6, 1972, both the motion and denial order having been filed on October 6, 1972 (R-91-93).

p. On October 6, 1972, the trial court certified that its order entered on October 6, 1972, was of such importance to the case that immediate review of said order should have been given (R-94).

q. On October 11, 1972, movants presented to this Court a 39-pages Application for Stay, with a 6-pages Summary, and on October 12, 1972, this Court denied said application.

r. Also, on October 11, 1972, the court reporter, in the trial court, executed an affidavit as to her inability to have produced the transcript by that date (R-95).

s. On October 27, 1972, the trial court extended the time for filing the transcript until December 4, 1972 (R-96).

t. On November 2, 1972, said court reporter certified her completion of said 425-pages transcript (T-425).

u. On November 22, 1972, the Honorable Lawrence McKenzie, Clerk of Macon Superior Court, transmitted the record and transcript to the Clerk of this Court and, further, certified that the delay in transmitting the record and transcript was not due to any fault of movants, which certification appears inside of the binder of the record of pleadings (R-unnumbered).

v. On November 27, 1972, the Honorable Mrs. Joline B. Williams, Clerk of this Court, docketed this case, as Case

No. 27682, and notified counsel of movants that the case was scheduled for oral argument (or by briefs) on the calendar beginning January 8, 1973.

w. On December 18, 1972, movants filed their Enumeration of Errors and first brief and on December 19, 1972, their first supplemental brief.

x. On January 8, 1973, the briefs of the sixteen county appellees and appellees Blackmon and Davis were filed.

y. On January 9, 1973, oral argument was made by movants and appellees Blackmon and Davis. Oral argument was not made for the county appellees.

z. On February 8, 1973, a decision not yet having been rendered in the case, movants filed a supplemental brief 95 pages long, plus 36 pages of exhibits.

2

The Court has also overlooked the following additional material facts in the record, to wit:

a. The ratio study of appellee Davis, the State Auditor, which was supposed to have been prepared in 1971, based partially on 1970 deed records in Macon County, was not presented to the county tax officials until May 16, 1972 (T-272).

b. By letter dated April 4, 1972 (T-249-250), appellee Blackmon informed the county appellees that appellee Davis had not yet completed said 1971 ratio study but that preliminary figures from appellee Davis indicated that the locally assessed, 100% value of Macon County tangible property for the 1972 digest probably was going to have to be at least $79,148,855.00 (T-251), as against $62,932,477.50 used in the 1971 digest (T-273).

c. However, appellee Blackmon, in said letter of April 4, 1972 (T-249, in the last sentence of the second paragraph

thereof), warned county appellees that even said $16,216,-407.50 increase might not be enough, that they could not yet use it as "a concrete projection," and that "a second study" would be completed soon.

d. On May 16, 1972, said "second study" indicated a need to raise said total digest (locally assessed) to $84,-507,362.00 (T-273), i.e., over 34% greater than the comparable figure for 1971.

e. The Board of Tax Assessors of Macon County, Georgia, in 1972, never examined the ad valorem tax returns of the property owners of the county, as the law requires them to do immediately after April 10, but instead its members claim to have examined the approximate 5300 permanent, **real** property cards of the Carroll-Phelps system on two different nights, that is, approximately 1060 cards for each of the five county appraisers (R-2-3, T-114, and T-317-318).

f. However, Mr. Fred Virden, one of the county tax assessors testified that the assessors only examined all of the **rural real property cards, not** even **all** of the real property **cards**, much less the ad valorem tax returns (T-140).

g. Virtually no property was physically examined by anyone during 1972 for the purpose of appraisal, assessment, and taxation in Macon County (T-50), (T-51-52), (T-57-58), (T-52), (T-54), (T-69-70), (T-114), and (T-119), which material fact has been overlooked by this Court is discussed in movants' supplemental brief filed on February 8, 1973, on page 81 to 84, among other places.

h. On June 8, 1972, the Board of Tax Assessors of Macon County, Georgia, increased the assessments on all rural, real property by 54% over their 1971 assessments, while only increasing the assessments on all urban, real property by 8% over their 1971 assessments (T-299). T-299 contains the "Minutes" of said county tax board for June 8, 1972, but T-299 is not in proper sequence. The "Minutes" for the meeting held on June 14, 1972, appears

just before the "Minutes" of the said meeting of June 8, 1972, and appears as T-298A.

i. "Mr. Bob Pond," an agent of appellee Blackmon was present at the crucial meeting of June 8, 1972 (T-299), and only three of the five county tax assessors were present at said meeting (T-299).

j. The first four of the five tax assessors cross-examined by movants testified that they did not know why the assessments were increased by 54% and 8% exactly, nor did they know how such percentages were calculated (T-114-115-116) (T-125-126) (T-139-140-141-142) and (T-157-158-159-160-161).

k. Even the fifth county tax assessor to testify, namely, the chairman, Mr. Walter Forsling, who did not testify until the third day of the hearing, testified incorrectly as to the arithmetic involved (T-169): 1.13 is correct for urban real property (assuming for the moment that the basic ratio study figures are correct), but 1.69 is incorrect for rural real property, that is, 1.65 is really correct; further, 13% dropped to 8% is a cut of 38%, whereas 65% dropped to 54% is only a cut of 17%, which disparity between new buildings in the rural areas and urban areas is possible, if Mr. Forsling meant this.

l. After June 8, 1972, the county tax assessors began backtracking on their original assessment increases of 54% and 8% and by the last day of the hearing had still made exceptions in only a little over 1% of the 5300 parcels of real property, which exceptions mostly consisted of a mixture of the 54% increase and the 8% increase, i.e., on some rural homes the land kept the 54% increase but the house got only the 8% increase (T-176-200), all of which exceptions numbered only 60, according to the "Minutes," in which all exceptions are recorded, according to the testimony of said appellee county tax assessor chairman Mr. Forsling (T-183).

m. On July 5, 1972, the county tax assessors increased the assessments of hogs by 500%, of cows by 200%, of tractors and other farm machinery by 100%, of machinery and equipment to be found in towns by only 50%, and inventories in towns by no percentage (T-302); apparently the "200%" increase on tractors and other farm machinery in the "Minutes" was a mistake of the clerk of tax assessors (T-49), the increase having been "only" 100%.

n. All notices to increased assessments made on real property were illegal (R-25) (T-127-128).

o. No notices whatever were sent to taxpayers as to increases on personal property assessments (T-22-24), even according to the trial court judge as to the six named movants (R-83).

p. The Board of Tax Assessors of Macon County adopted an intransigent position of refusing to allow arbitration even when it was demanded, after the taxpayer finally determined that he had a right to arbitration, which right was not indicated to him in any way by said illegal notices as to increases in real property assessments, nor indicated to him in any other manner by the county assessors (T-31-32-33-34) (T-246-247), which intransigent position of the Macon County tax assessors in 1972 seems to be altogether different from the apparently liberal policy of the Habersham County tax assessors in 1970 to allow arbitration to be demanded and obtained over a period of several months (see **Grafton**, supra).

q. Illustrative of said intransigence of the Macon County assessors, Mr. I. P. Cox, the first of the six named movants, demanded arbitration on July 31, 1972, at 7:30 P.M., at a joint meeting of the county assessors and county commissioners, and named his arbitrator; after consulting a lawyer that night, the county assessors agreed to engage in arbitration with Mr. Cox (T-31-32-33-34), but then, by letter dated August 2, 1972, and received by Mr. Cox on

August 5, 1972, they refused to arbitrate, invoking the argument that they had mailed him said illegal notice of assessment increase more than ten days prior to July 17, 1972, the date said illegal notice indicated that they would hear his "appeal," and that he had not demanded arbitration on July 17 and that it was too late thereafter for him to demand arbitration (T-246-247).

r. The trial court found it to be a fact that neither Mr. Cox, nor the other five named movants, had been given legal notice of the real property tax assessment increases and no notice whatever, either legal or illegal, of their personal property tax assessment increases (R-63, paragraph 1 of the "Findings of Fact") (R-87-86, paragraph 12 of the "Findings of Law," and paragraph 1 of the decree).

s. Said illegal notices mailed to the six named movants were identical in form to the other 5294 (approximate) notices mailed to all other real property taxpayers in Macon County, Georgia, in the summer of 1972, over half of which are members of the real class, movants, here (T-127-128), which form had spaces for personal property (R-25) (T-230-231-232), but such spaces were not used, nor was any other notice sent to any Macon County taxpayer as to the increases made on the assessments on personal property (T-134), nor was any such notice contemplated or even thought to be legally required, necessary, or desirable according to county assessor James E. Heath, Jr. (T-134).

t. On July 5, 1972, the county assessors "factored" columns 23 and 25 of the digest, that is, they raised all assessments of machinery and other equipment located in towns, in column 23, by only 50%, but raised all assessments on hogs by 500%, on cattle by 200%, and on tractors and other farm machinery by 100% (although the latter increase mistakenly appears even higher in the "Minutes" of the assessors as 200%) (T-302).

u. Then, immediately after having made said assessment increases on personal property on July 5, 1972 (T-302), said illegal notices, with spaces on the form for notice of any increase in personal property left blank in every instance, were mailed (T-128) to the approximate 3400 owners of approximately 5300 parcels of real property, over half of which 3400 taxpayers constitute movants here, and most of which movants owned personal property which received said increases in their ad valorem tax assessments on July 5, 1972.

v. Many members of the rural class, movants here, did not even receive said illegal notice as to their real property tax assessment increase due to inadequate mailing addresses used by the tax assessors, and when the notices were returned by the U. S. Post Office to the county assessors, the notices were not posted in front of the courthouse for thirty days, as required by Sec. 92-6911(c), nor on the bulletin boards inside the courthouse, nor posted anywhere else, **a list of names merely** having been posted inside the courthouse on or about August 2, 1972 (T-26-27), long after they had been returned, after movant Mr. I. P. Cox had begun to complain to the county assessors about their many failures to comply with the law.

w. Members of the county board of tax assessors considered themselves to constitute a board of tax appeals, as well as a board of tax assessors, and had no intention of allowing any aggrieved taxpayer to arbitrate (T-127-128).

x No taxpayer in Macon County, Georgia, was given an opportunity to arbitrate in 1972, except the six named movants after the trial court's order of October 6, 1972, although 137 notices of assessment increases were returned to the county assessors with words such as "rejected" and "refused" written on them (T-26), (T-324 to 372), and over three hundred owners of rural property, both real and per-

sonal, in Macon County, signed a petition declaring themselves to be a part of this class action (T-233 to 245). Further, many rural taxpayers appeared at the county courthouse on the dates that their "appeals" were to be heard and could not even get a hearing before the Board of Tax Assessors (T-110), much less arbitration.

y. The six named movants went through an arbitration procedure after October 6, 1972, pursuant to the trial court's order, but the Board of Tax Assessors is currently appealing to the trial court, i.e., Macon Superior Court, the awards of the arbitrators in each of the six cases, as indicated by exhibits A, B, C, D, E, and F, numbering 36 pages of the supplemental brief of movants filed on February 8, 1973, after a post-appeal allegation by the county appellees that movants (possibly meaning each and every member of the class) had sought arbitration after October 6, 1972.

z. Movants have never considered arbitration an adequate remedy at law and have never asked for arbitration in their pleadings.

3

The Court has overlooked the following Constitutional provisions, statutes, and decisions, which are controlling as authority and which would require a different judgment from that rendered, in that:

a. Article V of the Constitution of the United States provides, among other things, that, "No person shall . . . be deprived of life, liberty, or **property**, without due process of law . . ." (emphasis added).

b. Section 1 of Article XIV of the Constitution of the United States also provides, among other things, that, "No State shall . . . deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

c. Paragraph III, Section I, Article I of the Georgia Constitution providing for due process of law.

d. Paragraph II, Section I, Article I of the Georgia Constitution providing for the equal protection of the laws.

e. Paragraph III, Section I, Article VII of the Georgia Constitution requiring uniformity of taxation.

f. Ga. Code Ann., Section 81A-123(a)(1)(Acts 1966, pp. 609, 632), a statutory law providing for class actions under conditions which prevailed when this action was initiated and which conditions still prevail.

g. Ga. Code Ann., Section 92-5702 (Acts 1909, p. 75; 1968, p. 358), a statutory law defining "fair market value" for ad valorem tax purposes.

h. Ga. Code Ann., Section 92-5703 (Acts 1851-2, p. 291; 1909, p. 37; 1968, pp. 358, 359), a statutory law providing that all tangible property shall be assessed for ad valorem tax purposes at "40 per cent of said fair market value."

i. Ga. Code Ann., Section 92-6201 (Acts 1913, p. 123; 1945, pp. 424, 425; 1953, Nov. Sess., pp. 270, 271), a statutory law requiring tax receivers to receive ad valorem tax returns from January 1 to April 1 of each year.

j. Ga. Code Ann., Section 92-6902 (Acts 1913, p. 123; 1945, p. 423), a statutory law requiring tax receivers to present the tax returns of the counties to the county boards of tax assessors within ten days after April 1.

k. Ga. Code Ann., Section 92-6911 (Acts 1937, pp. 517, 519; 1970, pp. 580, 581; 1971, p. 33), a statutory law providing for some of the duties of the board of county tax assessors in each county, including their duty to examine tax returns, and the manner in which such a board shall change the assessment on any property and the manner in which notice of such change shall be given the taxpayers.

l. Ga. Code Ann., Section 92-6912 (Acts 1913, pp. 123, 127; 1918, pp. 230, 231; 1931, pp. 7, 35; 1958, p. 387; 1969, p. 942), a statutory law providing for arbitration of disputed new tax assessments, when demanded under certain conditions.

m. Ga. Code Ann., Section 92-6917 (Acts 1913, pp. 123, 129; 1931, pp. 7, 35; 1945, p. 251), a statutory law requiring the county boards of tax assessors to complete their revisions and assessments of the returns by June 1 of each year, and then further requiring the tax receivers of each county to forward immediately thereafter the completed digests to the State Revenue Commissioner for examination and approval.

n. Ga. Code Ann., Section 92-8406 (Acts 1937-38, Extra. Sess., pp. 77, 81; 1967, pp. 764, 765; 1970, pp. 298, 299), a statutory law requiring the Revenue Commissioner of the State of Georgia to administer all of the revenue laws of the state.

o. Ga. Code Ann., Section 92-8427 (Acts 1937-38, Extra. Sess., pp. 77, 91), another statutory law requiring the Revenue Commissioner to administer all of the revenue laws of the state.

p. Ga. Code Ann., Section 92-4611(8) (Act 1804, Cobb, 1045. Act 1807, Cobb, 1054. Act 1812, Cobb, 1057. Act 1813, Cobb, 1059. Acts 1851-52, p. 290; 1962, p. 533; 1970, p. 641), a statutory law requiring a tax receiver, "To conform to such rules as he may be furnished with, and to obey such orders as may be given by the State Revenue Commissioner."

q. Ga. Code Ann., Section 92-4901(8) (Acts 1878-79, p. 78), a statutory law requiring a tax collector to, "Conform to such rules as may be furnished, and to obey such orders as may be given by the Commissioner."

r. Ga. Code Ann., Section 92-8407.1 (Acts 1971, pp. 301, 302; 1972, pp. 824, 825), a statutory law prohibiting the State Revenue Commissioner from approving any county tax digest from a county in which "the assessed value fixed by the Board of Tax Assessors for any property, or properties, on appeal or in arbitration exceeds 3% of the total assessed value of the total digest of such county for the same year," etc., as amended in 1972, to 5%.

s. Ga. Code Ann., Section 92-7008 (Acts 1970, pp. 542, 543; Acts 1972, pp. 829, 833), a statutory law providing that the State Auditor shall "establish an equalized adjusted school property tax digest for each county in the State and for the State as a whole," and more specifically sub-section (d) thereof repealed in 1972 and sub-section (f) thereof as it read before and after the 1972 amendment.

t. Ga. Code Ann., Section 92-7011 (Acts 1970, pp. 542, 546; 1972, pp. 829, 832), a statutory law providing, among other things, that the State Auditor present his yearly ratio study of real property to county officials by November 15 prior to each tax year in which it is to be used as a guide.

u. Ga. Code Ann., Section 92-7012 (Acts 1970, pp. 542, 546; 1972, pp. 829, 832), a statutory law providing an arbitration procedure by which county officials may challenge the findings of any particular ratio study, but which procedure may take as much as 135 days.

v. Ga. Code Ann., Section 81A-165(b) (Acts 1966, pp. 609, 665; 1967, pp. 226, 240; 1972, pp. 689, 698), a statutory law requiring a trial court to give a case such as the one at bar ". . . precedence over all matters except older matters of the same character . . ."

w. Ga. Code Ann., Section 6-701(4)(b) (Acts 1965, p. 18; 1968, pp. 1072, 1073), a statutory law requiring this Court to review and determine the legality of the dismissal of appellees Blackmon and Davis as defendants by the trial

court by its order dated November 27, 1972, and also requiring the Supreme Court of Georgia to ". . . review all judgments, rulings or orders raised on appeal which may affect the proceedings below . . ."

x. Ga. Code Ann., Section 6-1601 (Act 1845, Cobb, 448. Acts 1872, p. 54), a statutory law which provides, among other things, ". . . The court shall decide all questions presented in the record of each case carried up to it for review . . ."

y. 226 Ga. 82, **Register et al. v. Langdale, Commissioner, et al.**, which case holds, inter alia, that, when a taxpayer alleges that ad valorem tax assessments are illegal and void, and when the taxpayer brings his action prior to the date the taxes are due and payable, he need not tender any payment to obtain equitable relief against the void assessments (division 1).

Register v. Langdale also holds that, when county tax assessors arbitrarily and discriminatorily establish tax assessments, those assessments are unconstitutional and void (division 4).

Register v. Langdale also holds, by implication, that arbitration is an inadequate remedy at law, under such circumstances of local "factoring," because this Court's reversal of Lowndes Superior Court, in effect, directed the trial court to enjoin the appeals of the county tax assessors' to Lowndes Superior Court ". . . from the award of arbitrators pending in the superior court." (See last sentence of first paragraph on page 83.)

Register v. Langdale also holds, by implication, that the issues of such a case are not moot merely because some money has already been paid to the tax collector by some taxpayers, based on the illegal digest and illegal demands of the tax collector, because this Court did not decide **Register v. Langdale** until January 26, 1970, as to 1969 taxes.

z. 219 Ga. 361, 364 (2) (1963), **Colvard et al. v. Ridley, Commissioner, et al.**, in which case this court held, on April 25, 1963, that the trial court of Murray County had to order any overpayment to be refunded to those taxpayers who ". . . voluntarily paid prior to approval of the digest by the Commissioner . . ." because ". . . the assessments made by the tax assessors were null and void, all further proceedings including the review and approval by the Revenue Commissioner . . ." being ". . . likewise null and void and completely nugatory."

aa. **Blackmon, Commissioner v. Brasington, et al.**, Case No. 27741, in the Supreme Court of Georgia, decided February 22, 1973, in which the court affirmed that part of the Brooks County trial court's interlocutory decree specifically ordering the local Tax Commissioner to accept any voluntary payments from taxpayers before a legal digest was compiled and to credit such payments against any legal liability for taxes for 1972 determined at a later date and to refund any overpayments.

bb. **Griggs, Tax Commissioner, et al. v. Greene, et al.**, Case No. 27719, in the Supreme Court of Georgia, decided February 22, 1973, in which the Court affirmed an interlocutory injunction against the tax officials of Fayette County, in which case the tax bills from the local tax collector had been mailed to the taxpayers as early as November 7, 1972, and Judge Whalen did not enjoin the tax officials until December 11, 1972, which order of the trial court was then revised by Judge Whalen to allow partial and voluntary payments of money to apply on eventually legal 1972 tax bills, like the provision of Judge Calhoun in his temporary order in Brooks County.

Then on December 19, 1972, this Court stayed the injunction of Fayette Superior Court in **Griggs** supra.

cc. **Fuentes v. Shevin**, . . . U.S. 378-379, 91 S. Ct. 786, a late 1972 case, holding that due process requires that parties

whose property rights are affected are entitled to a hearing, that to enjoy that right they must be notified, and that the notice must be made in a meaningful manner and the hearing granted at a meaningful time.

dd. **Central of Georgia Railroad v. Wright,** 207 U.S. 127 (1907), in which the U.S. Supreme Court reversed the Georgia Supreme Court which had affirmed the Georgia trial court in refusing to enjoin the ad valorem tax execution on property of the railroad company, in which case the taxpayer railroad company had not been given the constitutionally required notice of a new tax assessment and consequently had had no opportunity to be heard to contest the new assessment.

ee. **Security Trust and Safety Valve Company v. The City of Lexington,** 203 U.S. 323, a case cited in the railroad case in dd immediately above, wherein the U.S. Supreme Court said, inter alia:

> ". . . that somewhere during the process of the assessment the taxpayer must have an opportunity to be heard, that this notice must be provided as an essential part of the statutory provision and not awarded as a mere matter of favor or grace."

ff. **Richards v. Zentner,** 176 Ga. 222 (1932), a Georgia case holding, inter alia, that:

> ". . . the owner of the property should have had notice and should have been given an opportunity to contest the values placed on the property by the Board or its agent or other county authorities."

gg. **Gilmore v. Curry,** 225 Ga. 483, is a late Georgia case clearly requiring legal notice of a new tax assessment, and the facts of the case are that the taxpayer had personally reported additional property to the county tax assessors and therefore had every good reason to expect an increase in his total tax bill. However, the county assessors had not

complied with the statutory law, and therefore, the new tax assessment was null and void.

hh. **Hollis v. Parrish**, 228 Ga. 161 (1971), a late Georgia case in which this Court said:

> "Taxpayers who act with diligence can enjoin assessments which are null and void for lack of uniformity."

Hollis v. Parrish cites **Colvard v. Ridley**, supra, and **Register v. Langdale.**

ii. Several other cases which constitute authority that movants were entitled to notices and hearings, which cases this court cannot ignore, but nevertheless have overlooked so far, are as follows:

McGregor v. Hogan, 263 U.S. 234 (1923);
Turner v. Wade, 254 U.S. 64 (1920), 65 L. Ed. 134, 41 Sup. Ct. Rp. 27;
Hagar v. Reclamation Dist. No. 4, 108, 111 U.S. 701, 28 L. Ed. 569, 4 Sup. Ct. Rp. 663;
Linder v. Watson, 151 Ga. 455 (1921);
Macon v. Ries, 179 Ga. 320 (1934);
Friedlander v. Multry, 155 Ga. 184, 186;
Norwood v. Baker, 172 U.S. 269;
Pulman Co. v. Suttles, 187 Ga. 217 (1938);
Lane v. The Mayor and Council of Unadilla, 154 Ga. 577 (1922).

jj. Other cases which constitute authority that arbitration was not, and is not, an adequate remedy at law in the case at bar, which cases have so far been overlooked by the court are as follows:

Pulman Company v. Suttles, 187 Ga. 217 (1938) (also cited immediately above in ii on the point of lack of notice and hearing);
Hutchins, et al. v. Howard, et al., 211 Ga. 830;
Green, Tax Assessors, et al. v. Calhoun, et al., 204 Ga. 550.

kk. Other cases which constitute authority that the case at bar is a class action, which cases the Court has so far overlooked, are as follows:

Eisen v. Carlisle and Jacquelin, 391 F. 2d, pp. 555 and 560;

Hensberry v. Lee, 311 U.S. 32;

Richland v. Cheetum, 272 Fed. Supp. 148;

Montgomery Ward and Co. v. Langer, 168 F. 2d 182;

Culver v. Bell and Loffland, 146 F. 2d 29;

Green v. Wolf Corp., 406 F. 2d 291;

Epstein v. Weiss, 50 F.R.D. 387;

Champion Papers, Inc. et al. v. Williams, Commissioner, et al., 204 Ga. 550 (also cited above in jj on the point of inadequacy of arbitration under circumstances of the case at bar);

Escott v. Barchris Construction Corp., 340 F. 2d 731 (2d Cir. 1965), cert. den. 382 U.S. 816, 86 S. Ct. 37, 15 L.Ed. 2d 63 (1966);

Mullane v. Central Hanover Bank and Trust Company, 70 S.Ct. 652, 339 U.S. 306, 94 L. Ed. 865 (1950);

Dolgow v. Anderson, 43 F.R.D. 472 (D.C.N.Y. 1968).

ll. Other cases which constitute authority that movants had standing in the trial court for the injunctive relief sought by them, whether or not their case constituted a class action, which cases the Court has so far overlooked, are as follows:

Moore, et al. v. Robinson, 206 Ga. 27;

Hughes v. State Board of Medical Examiners, 162 Ga. 246 (in which case Ga Code Ann., Sec. 64-104, is cited as statutory authority, which statutory law the Court has also overlooked so far);

Board of Commissioners of Manchester v. Montgomery, 170 Ga. 361;

Dobson v. Brown, 225 Ga. 73.

4

The Court has erroneously construed, misapplied, and failed to give the correct effect to controlling Constitutional provisions, statutes, and decisions hereinafter set forth, which would require a different judgment from that rendered, as follows:

a. **Griggs, Tax Commissioner v. Greene**, Case No. 27719 in the Supreme Court of Georgia, decided on February 22, 1973, with no citation as to volume and page yet available, i.e., the Fayette County case.

b. **Blackmon, Commissioner v. Brasington, et al.**, Case No. 27741 in the Supreme Court of Georgia, decided on February 22, 1973, with no citation as to the volume and page yet available, i.e., the Brooks County case, decided by the same opinion as in **Griggs**, supra.

c. **Grafton v. Turner**, 227 Ga. 809 (183 SE2d 458).

d. **Kight v. Gilliard**, 214 Ga. 445 (105 SE2d 333), "and citations."

e. Any statutes and Constitutional provisions which the Court may have had in mind in reaching its decision of February 22, 1973, none of which is cited in the opinion and allusion to none having been made sufficiently for movants to identify same with exactitude, but which movants will try to identify herein later.

5

The Court has failed to review and decide the following questions presented to it in the record of this case:

a. Did the trial court fail to give the case at bar the priority it deserved under law, which question is raised by movants' enumeration of errors 1 through 8?

b. Did the Board of Tax Assessors of Macon County, Georgia, utilize arbitrary and discriminatory methods of

increasing the ad valorem tax assessments on the property of the movants, the rural class of property owners, in 1972, which question is raised by movants' enumeration of errors 9 through 15?

c. Was, and is, this a class action and who are its members, which questions are raised in enumerated errors 16, 18, and 38?

d. Did, and do, the six named movants have an adequate remedy at law in arbitration, which questions are raised in enumerated errors 17, 19, 27, and 28?

e. Was the use of the 1971 Tax Ratio Study for Macon County, Georgia, in 1972, by appellees illegal per se, because it was compiled in violation of both statutory and constitutional law, which questions were raised by enumerated error 21?

f. Were movants entitled to a temporary injunction against appellees, restraining them from assessing and collecting ad valorem taxes in Macon County, Georgia, from movants until such time as a genuine effort is made by appellees to find, appraise, assess, and tax **all** tangible property, both real and **personal**, in the county by most appellees, but throughout the state by appellees Blackmon and Davis, which question is raised by enumerated error 22?

g. Is ad valorum taxation unconstitutional because it cannot be administered in a constitutional manner, which issue is raised by enumerated errors 1 through 39?

h. Did the Board of Tax Assessors of Macon County, Georgia, in 1972, fail to equalize property values among the citizens of said county and fail to assess both real and personal property in the county equally as required by law, which questions are raised by enumerated error 23?

i. Did the Board of Tax Assessors examine the ad valorum tax returns of Macon County citizens in 1972, by

merely examining some, or even all, of the Carroll-Phelps permanent, real property cards, which question is raised by enumerated error 24?

j. Does such examination of such real property cards satisfy the statutory requirement of Ga. Code Ann., Sec. 92-6911 (a) (Acts 1937, pp. 517, 519; 1970, pp. 580, 581; 1971, p. 33; 1972, pp. 1114, 1118), to examine all the returns of both real and personal property of each taxpayer, which question is raised by enumerated error 24?

k. Does the method of tax assessment used by the Macon County tax assessors in 1972, including "factoring" of the various tax digest columns and without legal notice of the assessment increases to the individual taxpayers and without an opportunity to be heard to contest such increases, satisfy the statutory and constitutional requirements involved, which question is raised by enumerated error 24?

l. Did the Board of Tax Assessors in Macon County, Georgia, raise the tax assessment of any mercantile store inventory, or any other urban inventory, in 1972, which question is raised by enumerated error 10?

m. Did the failure of the Board of Tax Assessors of Macon County to increase any, or very few, urban inventories in 1972, while simultaneously increasing the tax assessments on all rural inventories, i.e., livestock, by 200% and 500%, without appraising or re-appraising any inventory, either urban or rural, constitute discrimination against the rural class of property owners, which question is raised by enumerated errors 10 and 25?

n. Did the increase of all tractors and other farm machinery by 100%, while only increasing urban equipment and machinery by 50% constitute discrimination, when no equipment was appraised, either rural or urban, which question is raised by enumerated error 25?

o. Are the due process clauses and the equal protection clauses of both the Georgia Constitution and United States Constitution satisfied when county tax assessors increase the tax assessments of all parcels of rural land and improvements in the county by 54% and all parcels of urban real property by 8%, with only a little over 1% of the total of 5300 parcels having any exception to the two percentage increases, which few exceptions themselves are arbitrary and discriminatory, without any appraisal or reappraisal having been made of any of said parcels for the purpose of the assessment increase, which question is raised by enumerated error 26?

p. Did, and do, all movants, i.e., the entire rural class, have any adequate remedy at law in arbitration under the circumstances of this case, which question was raised by enumerated errors 17, 19, 27, and 28?

q. Even if arbitration had been, or is, an adequate remedy at law for all movants, i.e., the entire rural class of Macon County, against 1972 ad valorum tax assessment increases, was any one of such class, other than the six named movants, or any other taxpayer for that matter, given legal notice of such increases and an opportunity to demand and get arbitration, which question is raised by enumerated errors 30 and 32, as well as by errors 17, 19, 27 and 28?

r. Does the State Revenue Commissioner have the constitutional authority under 1972 Georgia Laws, page 174, to increase the millage rate of a county; is not this Act an unconstitutional delegation of the taxing authority to an individual in the executive branch of state government, which question is raised by enumerated errors 29 and 31?

s. Cannot interested and affected property taxpayers have a tax receiver temporarily enjoined from submitting a compilation of names and numerals to the State Revenue Commissioner, as the new county tax digest, when it is

clear that the tax receiver has never laid the tax returns of the taxpayers before the board of county tax assessors, that the county tax assessors have never examined the tax returns for the subject year, that the tax assessors have not made the increases in assessments on the tax returns themselves but elsewhere, that there has been no legal notice to any taxpayer as to the increased assessments on real property, that there has been no notice whatever to taxpayers as to increased assessments on personal property, that all of the increases in assessments were actually affixed to the returns by the tax receiver, and that no property owner in the county has had the opportunity to arbitrate, except the six named movants, until such time as a tax digest is legally compiled, which question is raised by enumerated error 33?

t. Do not interested and affected taxpayers, whether or not they have a class action, and whether or not they have been given an adequate remedy at law in the form of arbitration, still have standing in court to demand and get an interlocutory injunction against tax officials from implementing the collection of "taxes" under a clearly unconstitutionally and otherwise illegally compiled tax digest, until such time as a legal digest can be and is compiled, which question is raised by enumerated error 34, and others?

u. Are not interested citizens and taxpayers entitled to a temporary order enjoining tax officials, both county and state, from removing any of the ad valorem tax records from their customary storage vault and adjoining office, until the final determination of the case, when there has been convincing evidence, including admissions of same in the "Minutes" of the county tax assessors, that the permanent real property records have been and are being falsified by the county assessors themselves, i.e., the original Carroll-Phelps data for which the county has paid

over $50,000.00, which question is raised in enumerated error 35?

v. Are not affected taxpayers entitled to a temporary injunction prohibiting the State Revenue Commissioner and the State Auditor and their agents from "advising" and pressuring county tax assessors to "factor" their various tax digest columns by arbitrary and discriminatory percentages, which "factoring" this Court has just declared to be unconstitutional when ordered by the State Revenue Commissioner himself which question is raised by enumerated error 36?

w. Does not the "equalized adjusted school property tax digest," i.e., the tax ratio study program, as set out in the Ga. Code Ann., Sec. 92-7008, 92-7009, 92-7010, 92-7011, 92-7012, 92-7013, and 92-7014 (Acts 1970, pp. 542, 549; 1972, pp. 829-833), have "application to the case at bar," and is not such legislation unconstitutional in that it provides for a rather elaborate and systematic study of real property values to be used in the ad valorum tax "equalization" program, without any corresponding program to study personal property values, and, in fact, now provides that any total delinquency found in a county's assessment of real property shall be assumed to be the percentage by which all personal property is also delinquent, which questions are raised by enumerated error 37?

x. And if all such legislation, as indicated immediately above in w, is not unconstitutional, was not the provision in sub-section (f), and in the last sentence thereof, of Sec. 92-7008, before 1972 revision, which read ". . . and he **may** develop separate ratios for personal property," (emphasis added), unconstitutional, inasmuch as, perhaps, the State Auditor necessarily had the constitutional duty to prepare comparable studies of tax ratio values on personal property, without legislation, which question is raised by enumerated error 37?

y. And if all such legislation, as indicated above in w, is not unconstitutional, is not the provision in sub-section (f), the last sentence thereof, of Sec. 92-7008, after the 1972 revision (Acts 1972, pp. 829-831), which reads as follows:

> "... The Auditor shall use the same ratio for other personal property excluding motor vehicles and bank stock within the county as is finally determined for real property within the county."

unconstitutional, inasmuch as, perhaps, the State Auditor necessarily has the constitutional duty to prepare comparable studies of tax ratio values on personal property, without legislation, and at least is constitutionally prohibited from obeying said 1972 revision, because there is simply no basis in fact or political economy to assume that such personal tangible property in any particular county has been assessed at the same ratio to 40% of fair market value as the total of real property in the same county, which question is raised by enumerated error 37?

z. And is not the unconstitutionality indicated in w, x, and y just above, the cotravention of the equal protection of the law provision of both the federal and state constitutions, as indicated above in items b and d of sections 3 on page 26, and also in contravention of the equal taxation provision of the Georgia Constitution, which question is raised by enumerated error 37?

aa. Does not Ga. Code Ann., Sec. 92-116 (Acts 1937-38, Extra. Sess., pp. 156, 159), which provides that the ad valorem tax on money in Georgia is 10c per $1,000.00, when $1,000.00 of rural land, at fair market value, was taxed $11.26 in Macon County, Georgia in 1971, and all land in Georgia has been approximately so taxed and is still being approximately so taxed, except land in urban areas which is taxed even higher when the city tax is added, up to a total of about $40.00 per $1,000.00, contravene the said

equal protection of the laws provisions and the equal taxation provision of the Georgia Constitution, regardless of the Georgia constitutional provision allowing intangible property, including money, to be considered a different class of property for purposes of ad valorem taxation, because there is no valid social reason for such great disparity between the taxation of money and land, there being perhaps only one valid social reason for money to be taxed at a different rate, namely, that inflation is constantly diminishing the real social value of money and constantly increasing the real social value of land, but not by a disparity of 1, or less, to 100, but more like 90, or more, to 100, which question is raised by enumerated error 37?

Conclusion

Movants have attempted to point out the matters overlooked by the Court and have undertaken to refrain from rearguing the entire case, and movants shall not here repeat all of our previous arguments; but they do invite a rereading of the record, the transcript, the enumeration of errors, and the first and second supplemental briefs heretofore filed on behalf of movants.

Before closing, however, movants respectfully ask the Court to consider a few more observations.

The main import, or thrust, if you prefer, of the majority opinion in **Griggs**, supra, seems to be that henceforth the State Revenue Commissioner shall keep a hands-off attitude toward inequalities in tax assessments among individuals in any particular county and merely concern himself with inequalities which he may find among the various 159 counties.

This is the main import of **Whitehead v. Henson**, 223 Ga. 329, a 1967 case, in which the court held that county arbitrators of individual complaints could take into consideration any peculiarity of valuation previously adopted by the

county assessors, and still prevailing, such as not using the fair market value for any property, but something less.

Of course, in **Whitehead**, the State Revenue Commissioner does not seem to be heavily involved, and in fact, the Court says, on page 332, toward the bottom of the page, ". . . No official except the Revenue Commissioner can be allowed to tamper with or alter that assessment."

Then in **Hawes v. Conner**, 224 Ga. 567, the Court upheld the State Revenue Commissioner in ordering the digest of Charlton County for 1967 increased, although from reading the opinion one cannot determine whether it was "factored" as a whole, or in the various digest categories. However, it was probably "factored" as a whole, because 1972 seems to be the first year that digest category "factoring" has occurred.

However, Chief Justice Duckworth, for the Court, in **Hawes v. Conner**, indicated that the Court expected differences among individuals in a county to be thrashed out at the county level and that individual taxpayers would not be heard in equity, if they had not already availed themselves of the legal remedy of arbitration.

Movants respectfully reiterate that they think Ga. Code Ann., Sec. 92-7001(c), and other "equalization" statutes, require the State Revenue Commissioner to see that equalization occurs among individual taxpayers, as well as among the counties.

However, conceding that the Court is essentially correct in that individual taxpayers will have to thrash out their tax complaints at the local level, this Court still cannot legally, simply ignore the facts of this case, or any other case, wherein due process of law and equal protection of the laws have been grossly violated at the local level, whether or not encouraged by the State Revenue Commissioner.

Movants, except the six named movants, have never had an opportunity to demand arbitration in Macon County, much less get it, because they received no meaningful notices of the universal assessment increases.

As the Court's opinion is presently written, no one reading it in the future will be able to determine very well what the facts were in **Cox v. Blackmon**, but the facts in the case are before this Court in super abundance.

And the facts are, essentially, that movants are about to be deprived of property in a grossly unconstitutional manner, with the tolerance of the Supreme Court of Georgia.

This case is not moot. Movants attach hereto as Exhibit A a copy of a newspaper notice from appellee Mrs. Hammock, who has moved up from Tax Receiver to Tax Collector, which notice was run in the official organ of Macon County in its issue of March 1, 1973, which notice is a clear indication from appellees themselves that not nearly all the money has been collected which appellees consider to be 1972 taxes.

Movants as a class have been previously advised by counsel that the so-called 1972 Tax Digest for Macon County is illegal, null and void, and counsel has further advised them as early as November to pay, if anything, the same amount that each of them paid in 1971.

On February 26, 1973, Mrs. Hugh Campbell, Secretary of the Taxpayers Association of Macon County, determined, with the assistance of appellee Mrs. Hammock, who is now the Tax Collector, that a total of $69,263.75 had not been paid under said illegal digest, and Mrs. Campbell also determined that many of movants have paid nothing and many have made only a partial payment. The Court has the authority to obtain this sort of information, and movants respectfully ask the Court to further verify these facts.

However, movants still insist that legally and equitably it should make no difference whether or not all the demands of appellees for illegal payments have been met. In equity any illegal payment can be refunded by direction from this Court.

Upon each and every ground of this motion, movants submit that a rehearing should be granted and the decision reversed.

Respectfully submitted

Carl P. Savage, Jr.
Attorney for Movants

Please, Serve:

Carl P. Savage, Jr.
Attorney at Law
104½ West Railroad Avenue
P. O. Box 431
Montezuma, Georgia 31063
Telephone: (912) 472-8265

EXHIBIT A

Citizen & Georgian, Montezuma, Georgia, Thursday, March 1, 1973

NOTICE TO MACON COUNTY TAXPAYERS!

A ruling from the Georgia Supreme Court this week failed to give any reduction in the 1972 taxes due Macon County. Therefore all taxes are due in full. Come in to avoid further interest and penalty charges on your taxes.

VIRGINIA H. HAMMOCK, T. C.
MACON COUNTY

CERTIFICATE OF SERVICE

I, Carl P. Savage, Jr., counsel for movants, do hereby certify that I have this date served copies of the foregoing motion for rehearing upon appellees by delivering the same by registered and certified mail to the following attorneys of record for the various appellees, before submiting same for filing and recording to the Court.

Mr. William T. Roberts
Attorney at Law
South Dooly Street
Montezuma, Georgia

Mr. H. Perry Michael
Assistant Attorney General
132 State Judicial Building
40 Capitol Square
Atlanta, Georgia

This 5th day of March, 1973.

/s/ Carl P. Savage, Jr.

APPENDIX R

The Supreme Court, State of Georgia

Civil Action, File No. 27682

Appeal

Macon Superior Court, Macon County

I. P. Cox, Sammie H. Cox, Irma J. Creel, F. Wheeler Smith, M. M. Bray, and Clemon Odom, Suing on Behalf of Themselves and All Other Owners of Rural Real and Personal Property in Macon County, Georgia, Subject to 1972 Ad Valorem Tax Assessment Increases for State, County, and School Taxes,

Appellants,

vs.

John A. Blackmon, State Revenue Commissioner; Ernest B. Davis, State Auditor; Mrs. E. D. Hammock, Tax Receiver of Macon County; J. H. Patterson, Tax Collector of Macon County; Roy S. Windham, Sheriff of Macon County; Hugh D. Crook, Chairman, Herbert Coogle, J. M. Slaton, Randall Jinks, and Doyle H. Johnson, as Members of the Board of Commissioners (of Roads and Revenues) of Macon County; the Board of Commissioners (of Roads and Revenues) of Macon County; W. H. Guerry, Clerk of the Board of Commissioners (of Roads and Revenues) of Macon County; Walter Forsling, Chairman, Fred F. Virden, R. A. Phillips, James E. Heath, and G. L. Williams, as Members of the Board of Tax Assessors of Macon County; the Board of Tax Assessors of Macon County; and Bruce P. Hill, Clerk of the Board of Tax Assessors of Macon County,

Appellees.

Notice of Petition for Writ of Certiorari and Application for Stay

Notice is hereby given that the above-named appellants, on behalf of themselves and all others similarly situated,

hereby make motion for review to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Georgia denying appellants' motion for rehearing, entered in this action on March 15, 1973, and from the judgment of the Supreme Court of the State of Georgia, entered in this action on February 22, 1973, affirming the interlocutory judgment of the trial court, i.e., the Superior Court of Macon County, Georgia, entered in this action on October 6, 1972.

The mode of review now sought by appellants is by petition for a writ of certiorari, accompanied by an application for stay.

The clerk will, please, omit nothing from the record on motion for review.

Dated: March 16, 1973.

/s/ Carl P. Savage, Jr.
Attorney for Appellants

Address:
Carl P. Savage, Jr.
Attorney at Law
P. O. Box 431
104½ West Railroad Avenue
Montezuma, Georgia 31063
Phone: (912) 472-8265

CERTIFICATE OF SERVICE

Georgia, Macon County

I, Carl P. Savage, Jr., do hereby certify that a true copy of the foregoing Notice of Petition for Writ of Certiorari and Application for Stay has this day been properly mailed to counsel of record for appellees herein, to-wit:

Mr. W. T. Roberts
Attorney at Law
Montezuma, Georgia 31063

Mr. H. Perry Michael
Assistant Attorney General
132 State Judicial Building
40 Capitol Square
Atlanta, Georgia 30334

This March 16, 1973.

/s/ Carl P. Savage, Jr.
Attorney for Appellants

APPENDIX S

In the Superior Court of Macon County

State of Georgia

Civil Action File No. 3049

Complaint

I. P. Cox, Sammie H. Cox, Irma J. Creel, F. Wheeler Smith, M. M. Bray, and Clemon Odom, Suing on Behalf of Themselves and All Other Owners of Rural Real and Personal Property in Macon County, Georgia, Subject to 1972 Ad Valorem Tax Assessment Increases for State, County, and School Taxes,

Plaintiffs

vs.

John A. Blackmon, State Revenue Commissioner; Ernest B. Davis, State Auditor; Mrs. E. D. Hammock, Tax Receiver of Macon County; J. H. Patterson, Tax Collector of Macon County; Roy S. Windham, Sheriff of Macon County; Hugh D. Crook, Chairman, Herbert Cogle, J. M. Slaton, Randall Jinks, and Doyle H. Johnson, as Members of the Board of Commissioners (of Roads and Revenues) of Macon County; the Board of Commissioners (of Roads and Revenues) of Macon County; W. H. Guerry, Clerk of the Board of Commissioners (of Roads and Revenues) of Macon County; Walter Forsling, Chairman, Fred F. Virden, R. A. Phillips, James E. Heath, and G. L. Williams, as members of the Board of Tax Assessors of Macon County; the Board of Tax Assessors of Macon County; and Bruce P. Hill, Clerk of the Board of Tax Assessors of Macon County,

Defendants

Order

(Filed October 6, 1972)

This action came on for a hearing before the Court on the 11th, 12th, and 15th of September, 1972, and the issues having been duly heard by the Court:

The Court makes the following findings of fact:

1. The tax notices sent to the six named plaintiffs in this action, copies of which were received in evidence, did not adequately describe the property assessed in the notice; there was no information setting forth an increase in the assessment of personal property of the respective plaintiffs, even though, as to some of the plaintiffs, other testimony developed the fact that assessments as to personal property were increased; the notice of assessment did not use the word "arbitration" even though Code Section 92-6911 (Georgia Laws 1971, page 33) requires "a reference to the applicable time period for residents and non-residents in which arbitration may be given."

2. The Board of Tax Assessors of Macon County did in fact increase for the year 1972 the assessments of almost all of the rural real property in Macon County by a percentage of 54%, with the exception of most residences constructed since 1964.

3. The Board of Tax Assessors of Macon County increased the assessments of almost all urban real property in Macon County by a percentage of 8%.

4. Increased assessments of certain types of personal property in Macon County were made by the Board of Tax Assessors, to wit, cows, hogs, and farm machinery being increased, and there were apparently no increases made in the assessments of personal property of the type classified as inventories of stores in most instances.

5. As to the foregoing increases of assessments of rural real property by 54% and urban real property by 8%, there was evidence received of several exceptions to these guidelines, which is indicative to the Court that the intention of the Board of Tax Assessors was to equalize the assessment of real property in Macon County. In addition, the following is noted from the Minutes of the Macon County Board

of Tax Assessors concerning a meeting held on August 3, 1972, with all members present:

> "Each assessor took all the property record cards pertaining to his individual district and went through the individual cards noting corrections on those that were felt to be in error or unequal. They consulted with each other as to the adjustments or corrections made in each district."

In addition, the following is noted from the Minutes of the meeting of the Macon County Board of Tax Assessors of August 10, 1972, with a majority of the Board present:

> "The assessors went through the property record cards that were pulled and reviewed in the August 3, 1972 meeting and refiled those cards needing no adjustments."

6. Guidelines in the form of results from a tax ratio study made by personnel from the office of the State Auditor, in accordance with a provision of Section 92-7008 of the Code of Georgia of 1933, as Amended, as to the 1971 property valuations were used and considered by the Macon County Board of Tax Assessors in its assessing of property in Macon County, both real and personal.

7. No evidence was produced during this hearing by the plaintiffs to indicate to this Court that real property located and situated in Macon County belonging to public utilities is not and has not been properly assessed by the State Revenue Commissioner according to law.

8. The Board of Tax Assessors of Macon County has not pursued a policy of failing to assess personal property (with the exception of motor vehicles) of taxpayers who did not own real property also, although there were some indications in evidence that certain items of personal property belonging to individual taxpayers who do not own real property may not have been returned by the taxpayers nor assessed by the Board of Tax Assessors.

9. There was no evidence of coercion or interference on the part of the Board of County Commissioners of Macon County as to the actions of the Board of Tax Assessors of Macon County.

10. There was no evidence of illegal intervention by State Revenue Commissioner Blackmon nor the State Auditor Davis, both named defendants in plaintiffs' complaint, and specifically, there was no evidence of any ordering by either defendant Blackmon or Defendant Davis to increase assessments by certain percentages.

The Court reaches the following conclusions of law:

1. "The granting and continuing of injunctions always rests in the sound discretion of the Judge, and this power shall be prudently and cautiously exercised, particularly when a whole year's finances of a political sub-division are involved, unless the law and the facts clearly demand such actions." **Kight v. Gilliard**, 214 Ga. 445.

2. A class action in the cases involved is not a proper remedy for the plaintiffs, since it could result in certain taxpayers of Macon County, who are not named in this suit as plaintiffs, being required to pay a greater amount of taxes should the contemplated lowering of the millage rate not take place after the increased assessment is completed. Therefore, it would not be fair to such taxpayers so situated to be included as plaintiffs in this action, which, if successful, would result in higher taxes to them. Further, the named plaintiffs have an adequate remedy at law by the method of arbitration as provided in Code Section 92-6912 of the Code of Georgia of 1933, as Amended, which section provides for an appeal to a jury in the Superior Court of the county should the difference in taxpayers' returned valuations from the assessed valuations exceed $1,000.00.

3. The attempt of plaintiffs to add as parties plaintiff to this action some three hundred owners of rural real prop-

erty in Macon County as parties plaintiff by signing a petition indicating their desire to be considered part of this class action, which list of property owners was received as an exhibit in evidence, does not constitute a legal manner of pleading in a court of law in this State, and, therefore, said individuals will not be considered as parties to this action.

4. The alleged notice of assessment attached to the pleadings as "Exhibit B" to plaintiffs' original complaint, when considered with the copies of said notices of assessment directed to the six named plaintiffs, which copies were received in evidence, failed to comply with the requirements of paragraph (b) of Code Section 92-6911, and the said six named plaintiffs must be given the opportunity to demand arbitration of the increased assessment of his or her property.

5. The fact that intangible personal property is taxed at a different rate from the rate used for real property and other types of personal property is not illegal. **Miller v. Mitchell**, 226 Ga. 892, headnote 3, citing **Thomas v. Gay**, 169 U.S. 264.

6. The used of information contained in the tax ratio study made by personnel from the office of State Auditor Davis, pursuant to Code Section 92-7008, seq., of the Code of Georgia of 1933, as Amended, for the purpose of assisting the Board of Tax Assessors of Macon County in its task of equalization of tax assessments is not per se illegal.

7. That the law of the State would not authorize or justify this Court in restraining or enjoining the named defendants from assessing and collecting taxes in Macon County, Georgia, until **all parcels of all classes of property** are sought out, found, discovered, and identified, including all real and personal property.

8. Plaintiffs have failed to show that the Board of Tax Assessors of Macon County have failed to assess real and

personal property in Macon County, Georgia at its fair market value; and plaintiffs have further failed to show that the Board of Tax Assessors of Macon County have failed to equalize property values between individual taxpayers of Macon County, Georgia.

9. The method of tax assessments in Macon County, employed by the local taxing officials of Macon County, is not unconstitutional either under the United States or Georgia Constitutions, since the evidence revealed that the members of the Board of Tax Assessors and the Board as a whole considered each parcel of property on the tax books in Macon County, as returned by the property owners, and made adjustments to valuations of many of these parcels of property, as set out in the minutes of the Board of Tax Assessors of Macon County.

10. Failure to increase assessments of most of the inventories of stores in Macon County while increasing assessments of other types of personal property in Macon County, such as cows, hogs, and farm machinery, is not of itself discriminatory so long as the increased assessments tend to equalize assessments of all types of personal property, other than motor vehicles.

11. Contrary to allegations contained in paragraph 53 (d) of plaintiffs' complaint and paragraph 63 (a part of count 2) of plaintiffs' complaint, the effort to equalize tax assessments of real and personal property in Macon County by the local tax officials does not constitute a violation of either the equal protection clause nor the due process clause of the 14th Amendment to the United States Constitution; nor does the aforesaid equalization attempt to violate Article VII, Section I, paragraph III of the Constitution of the State of Georgia (Section 1-5403 of the Code of Georgia of 1933, as Amended).

12. With the provision contained in this order providing for plaintiffs to be given the opportunity to demand arbitration of their increased tax assessments in accord-

ance with the provisions of Code Sections 92-6911 and 92-6912 of the Code of Georgia of 1933, as Amended, the plaintiffs have an adequate remedy at law, arbitration being an adequate remedy at law for taxpayers dissatisfied with the assessments of property returned by them for taxation, since the arbitrators have authority and a duty to make their valuations uniform with other valuations. **Whitehurst v. Henson**, 223 Ga. 329 and **Hawes v. Comer**, 224 Ga. 567.

IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The Board of Tax Assessors of Macon County, Georgia proceed instanter to notify the six named plaintiffs in this action of the increase in tax assessments in the 1972 tax rates in accordance with Code Section 92-6911 of the Code of Georgia of 1933, as Amended, and that the said Board of Tax Assessors follow Code Section 92-6912 of the Code of Georgia of 1933, as Amended, so as to provide arbitration to the said six plaintiffs, should any or all of said plaintiffs demand arbitration by giving notice to the Board and naming his or her arbitrator.

2. The application of plaintiffs contained in paragraph 57 of plaintiffs' complaint for a temporary or interlocutory injunction to restrain defendant Blackmon from increasing the ad valorem tax rate is hereby denied, this Court holding that the delegation of the power to tax by the Legislature of the State to one official of the executive branch of State Government, as set forth in an Act of the General Assembly (1972 Ga. Laws 174) is not unconstitutional.

3. The application of plaintiffs for a temporary or interlocutory injunction restraining defendants from doing anything toward implementing the collection of taxes based on the 1972 ad valorem tax assessment increases on plaintiffs' rural real and personal property in Macon

County, Georgia, and specifically restraining defendant Mrs. Hammock from using such increased assessment in the 1972 tax digest, and specifically restraining defendant Blackmon from approving a 1972 digest for Macon County with such increased assessments incorporated therein, and defendant Sheriff Windham and defendant Tax Collector Patterson, respectively, from collecting taxes based on such increased assessment, be, and it is, hereby denied.

4. The application of plaintiffs for a temporary or interlocutory injunction restraining defendant Blackmon from increasing any ad valorem tax millage rate for Macon County, Georgia be, and it is, hereby denied.

5. That the method of equalization of assessments employed by local tax officials of Macon County, Georgia is hereby held to be constitutional, contrary to the prayer of plaintiffs in Count II of its complaint.

6. The application of plaintiffs contained in Count II of plaintiffs' complaint for a temporary or interlocutory injunction restraining the defendant Mrs. Hammock, as tax receiver of Macon County, from submitting the 1972 Macon County tax digest to defendant Blackmon, State Revenue Commissioner, be, and it is, hereby denied.

7. The application of plaintiffs that defendants and their successors in office be temporarily enjoined from in any manner, implementing the collection of taxes based on said 1972 ad valorem tax assessment increases for the year 1972 be, and it is, hereby denied.

8. The Board of Tax Assessors and its employees and all other named defendants are hereby temporarily enjoined from erasing or obliterating any of the information on the permanent property cards, the bound plat tax volumes and their indices, and from destroying any of said cards, plats and indices, and any part of any said cards, plats and indices, limiting any necessary corrections or notations to the adding of new figures and other information and the

interlining, without erasing or obliterating, of old figures and other information on said records.

9. The application of the plaintiffs for a temporary or interlocutory injunction against the Board of Tax Assessors of Macon County, their individual members, their clerk and everyone else from removing any of said cards, plats and indices from the vault and office of said local tax officials, except by order of this Court, which tax cards, plats and indices form part of the Carroll-Phelps tax system for Macon County, including any other part of Carroll-Phelps system, be, and it is, hereby denied.

10. All defendants are temporarily enjoined from interfering with the micro-filming of said entire Carroll-Phelps system at the expense of the plaintiffs, provided said micro-filming shall be done in the presence of one or more of said local tax officials and one or more of the named plaintiffs, or one or more of their attorneys, within the Macon County Courthouse, and, provided that said micro-filming does not interfere with the performance of normal duties of defendants.

11. The application of plaintiffs for a temporary or interlocutory injunction restraining the defendants Blackmon and Davis from illegally interfering in the preparation of the 1972 digest of Macon County by orders, either written or verbal, by directives, and by advice, either written or verbal, which intervention is based in any manner on the so-called ratio study which said defendants Blackmon and Davis and their agents have intended Macon County tax officials to use in 1972, be, and it is, hereby denied, this Court finding no evidence whatsoever of any illegal intervention on the part of defendants Blackmon and Davis in the preparation of the 1972 tax digest for Macon County.

12. The plaintiffs' motions and prayers to declare certain portions of the statutes of the State of Georgia as enacted by the General Assembly, and specifically described in

plaintiffs' complaint, be, and they are hereby denied, it being the holding of this Court that none of the statutes relating to the "tax ratio study", as set forth in the Acts of the General Assembly for 1970, pages 542-549, as amended by the General Assembly (1972 Ga. Laws, pp. 829-833), has no application to the issues in this action, and other statutes are hereby declared to be constitutional.

And it is so ordered this 5th day of October, 1972.

(Illegible)
Judge, Macon Superior Court